

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
John C. Hayes III, Circuit Court Judge

Appellate Case No. 2015-001053

Majorie Cato Burton as Trustee
the Sloan Marvin Burton and
Majorie Cato Burton, AB Livir
Trust by and through David A
Burton as Attorney-in-Fact,
Individually and in the right an
on behalf of T.E. Cato Estate,
LLC,

Appellant,

v.

Carroll M. Pitts, Jr., Esq. and
Robinson Bradshaw &
Hinson, P.A.,

Respondents.

RECORD ON APPEAL VOLUME 5 OF 5

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FEB 23 2016

SC Court of Appeals

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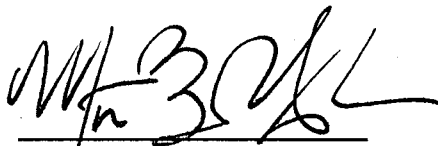
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 22 2016

A handwritten signature in black ink, appearing to read 'M. B. Rosbrugh', written over a horizontal line.

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Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

James Thomas Cato, Helen Cato Jones,
Donn S. Johnson, Jane Cato West,
Robert Lee Cato, and Cathy Cato Evans,
Petitioners

Case No. 2008-CP-46-3171

v.

NOTICE OF MOTION AND MOTION

Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust,
Respondent

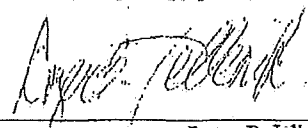
NOTICE OF MOTION AND MOTION TO DISQUALIFY OPPOSING COUNSEL

YOU WILL PLEASE TAKE NOTICE that Respondent, Marjorie Cato Burton, as a Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, through the undersigned attorney will on the tenth day after service hereof at 10:00 AM, or as soon thereafter as counsel can be heard, move pursuant to Rule 7(b), SCRCP, before the York County Court of Common Pleas, move the Court to enter an order disqualifying Carroll M. Pitts, Jr., Esq., as attorney for Petitioners. In support of this motion, Respondent shows the following to the court:

1. Upon information and belief, while he may have communicated with and through its General Manager, the prior representation of Petitioners' attorney with respect to formation of the T.E. Cato Estate, L.L.C., and otherwise, was for the benefit of all members of the T.E. Cato Estate, L.L.C., including both Petitioners and Respondent, at the time the events giving rise to this case occurred, as shown by the correspondence attached as Exhibit A.
2. Rule 1.7 of the South Carolina Rules of Professional Conduct prohibits a lawyer from representing a client without informed written consent from each affected client where there is a concurrent conflict of interest. Respondent has not consented. Thus, the participation of Carroll M. Pitts, Jr., Esq., as Petitioners' counsel violates Rule 1.7, SCRCP, and constitutes an impermissible conflict of interest.
3. Given his participation in the matters and events related to the captioned action, Petitioners' attorney will quite likely be a witness with respect to issues in the Petition and the Third Party Complaint in the captioned action.
4. Respondent requested by letters dated February 28 and April 15, 2009, copies of which are attached as Exhibit B, that Carroll M. Pitts, Jr., Esq., agree to withdraw but, as of this date and time, he has refused to do so. Respondents respectfully request that Petitioners' attorney in this matter be disqualified.

WHEREFORE, Respondent moves the court to disqualify Carroll M. Pitts, Jr., Esq., as Petitioners' counsel in the above-captioned matter and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted this 27th day of April, 2009.


Roger B. Jellenik
Attorney for Respondent and Third Party Plaintiff
SC Bar No. 13546

Roger B. Jellenik
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F. 803-424-1922
e. rbjatty@mac.com

RBH 001569

01913

EXHIBIT A: CORRESPONDENCE

ITEM 1: e-mail from James Thomas Cato dated December 8, 2007, 6:19 PM (§3 on page 1).

ITEM 2: e-mail from James Thomas Cato dated August 28, 2007, 5:45 PM (next to last paragraph on page 2).

ITEM 3: e-mail from James Thomas Cato dated August 20, 2007, 12:28 PM (§6 on pages 1 and 2).

ITEM 4: e-mail from James Thomas Cato dated July 12, 2007, 1:53 PM (2/08/07, 2/19/07, 3/30/07, 5/10/07, 5/14/07, 5/30/07, 6/06/07, 6/11/07, 6/18/07 on pages 1, 2, and 3).

David Burton Road Runner

From: "Marvin Burton" <SloanMBurton@hotmail.com>
To: "David Burton RR" <dburton4@nc.rr.com>
Sent: Wednesday, December 26, 2007 8:18 PM
Subject: Fw: Fw: Requirements for signing of Cato SCDOT quitclaim deed

----- Original Message -----

From: CharlnsOff@aol.com
To: SloanMBurton@hotmail.com
Sent: Saturday, December 08, 2007 6:19 PM
Subject: Re: Fw: Requirements for signing of Cato SCDOT quitclaim deed

Dear Aunt Marjie,

Thank you for specifying your conditions for approving the Quit Claim that will clear title for Area B. Four of your requirements are numbered but the last paragraph isn't. Let's call that one "Paragraph #5".

#1. Bob, Donn, Cathy, Jane, and I do not consent to pay your taxes nor to pay Helen's taxes. I surveyed each and their responses were clear. The answer to that requirement is "no".

#2. Cash payments to you from the Corporation would be extraordinary. Such requests for cash disbursements would properly be submitted to the partners for a special vote. I assume your 20% interest would approve. Each of the other partners would vote their percent interest. I will submit such a request to a vote when such a request is received.

#3. I can assure you that there are no felonious activities on my part. The charge to the Corporation C.P.A. was to make sure each partner was protected from every other partner. In particular to make sure the actions of the General Manager were all proper. The Corporation Attorney was similarly instructed. As has been emphasized in several of our letters and was discussed with you and Marvin in June, all of the G.M. actions are approved in advance by counsel and by accountant. Cathy, Jane, Bob, and Donn are not interested in protesting their innocence. My position is that I am innocent until proven guilty. Like you, I yearn to believe that our relatives are honorable people, but to require a affidavit to their innocence does not have 100% acquiescence. Also, your requirement is prior restraint against future activities not related to our present effort.

#4. Each partner was offered an opportunity to buy all or part of the property in August. Even extended family members were given that opportunity. No one took the opportunity to meet or exceed the offer that was on the table. No one expressed any interest. No one asked for additional time. So, the afternoon of August 3, 2007 the Intent to Purchase Agreement was signed with the Thomasson Company for the four parcels. Unless the contracted buyer releases the L.L.C. from that agreement, the L.L.C. cannot agree to sell any of those four parcels to anyone. If another buyer were to be a partner, then the G.M. would be compelled to submit that proposal to a vote of all partners.

#5. It is unlikely that the buyer would put himself at risk that you would wait until April 2008 to decide whether or not to sign the Quit Claim Deed clearing title to Area B. I can't say he won't, just it's unlikely.

In summation, it appears your demands cannot be satisfied. Sorry.

I hope you will please go ahead and sign and notarize the Quit Claim Deed for the "old roadbed" across Area B so that the partners can proceed.

Regards,

Your nephew,
Tommy Cato

Check out AOL Money & Finance's list of the hottest products and top money wasters of 2007.

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.516 / Virus Database: 269.17.9/1197 - Release Date: 12/25/2007 8:04 PM

RBH 001572

01916

Subj: Fwd: Summary of search for buyer for A,B,C,&D-U.S.Mail to Helen+Cathy+Jane
Date: 8/29/07 10:51:28 A.M. Eastern Daylight Time
From: CharInsOff
To: sloanmburton@hotmail.com, DBurton4@nc.rr.com, teamjohnson@charterinternet.com, treblard@comcast.net, sara.TheFamilyConnection@cote-homeless.org, JONESCLIPPER

Get a sneak peek of the all-new AOL.com.

Forwarded Message:

Subj: Summary of search for buyer for A,B,C,&D-U.S.Mail to Helen+Cathy+Jane
Date: 8/28/07 5:45:14 P.M. Eastern Daylight Time
From: CharInsOff
To: hcato03@earthlink.net

T.E.Cato Estate L.L.C.
RESULTS
of
ACTIVITIES to 8/3/07 and
CONCLUSIONS

Following through on the plan and strategy discussed and polled with each partner from 2/8/07 to 8/3/07, these are the prospects and bidders contacted. Each got four approaches:

1. visit to solicit bid on four parcels and review map
2. conference to discuss developer's analysis and offer
3. conference to bid one against another for more than offered by last bidder
4. conference to do market appraisal

A. TUTTLE COMMERCIAL DEVELOPMENT CO., Rook Hill, and Mr. Will Jordan. Tuttle is leading property developer in Rock Hill area. Mr. Jordan lives nearby and has studied our property for over 10 years. They prefer owners to do engineering studies in order to make parcels more marketable (about \$4,000.00 per parcel). No sewer. Do not split up or sub-divide. Anticipate big problems with the Corps of Engineers. \$300.00 to \$400.00 per foot to put in streets. \$27,000.00 to \$33,000.00 as range for good lots. Area D needs re-zoning. Area D, if re-zoned, could bring as much as \$300,000.00. Divide up Area B and try to put in sewage pumping station for Ebenezer Road frontage and hope to put in a convenience store. Put in water and sewer and engineering study and may be able to get \$300,000.00 to \$400,000.00 out of that parcel over the next 3 to 4 years. Area A has a sewer problem. May be able to cut Area A up and get two to four building lots from Area A if can get a sewer line put in. Don't think it will "perk" because of topography. Don't think you can get anyone to buy Area C because of topography, no sewage, and no road. That is, it couldn't bear development expense for its present single-family residential zoning. We don't want any of those pieces but we are willing to list and try to sell it for you at 8% commission instead of our usual 10%. Market appraisal is about \$700,000.00 - if you can find anyone who is interested. Turned down offer to buy for \$1,000,000.00+

Wednesday, August 29, 2007 America Online: CharInsOff

RBH 001573

cash sale with "If you can get that, take it!"

B. CHILDRESS KLEIN PROPERTIES, Charlotte - Acquisitions and Development Mgr. Mr. Chris Thomas Visited property. Studied the furnished materials and package. Thomas has developed many shopping centers and apartment complexes in the Charlotte and Rock Hill metropolitan area :

Development has moved elsewhere. Maybe can get \$300,000.00 for Area B. Area B has the best topography of the four sections. You may be able to find a buyer willing to pay as much as \$800,000.00 for the four pieces. Our company is not interested at all. Our requirements are for water and sewer to be in if we are to develop. Not interested at any price. Later, " That property is not worth \$1,000,000.00".

C. WARREN NORMAN COMPANY. Ralph Norman, David Norman, and Warren Norman II. Very respected builder/developer of tracts and shopping centers. Tommy worked on Ralph's U.S. Congress campaign (we lost to U.S. House Rep. John Spratt). Lib dealt with the original Warren Norman who offered in the early '70s, to develop all of Cato Estate for a 5% fee. The Catos ignored Lib's recommendation. The three-generation Norman family is a bunch of good people (Lib approved of them). They studied all the maps and walked the property. Concerned with the wetlands - takes about a year to complete a required wetlands study and a lot of money just to prepare an appeal to the Corps of Engineers. Engineering studies might reveal something you don't want known. We don't want the property, but will list it for you at 6% commission. We don't think that property is worth \$1,000,000.00 because of its topography and its wetlands.

D. KUESTER REAL ESTATE SERVICES. Old Charlotte family - ex-mayors, ex-Buick dealer from the teens, twenties, and thirties. Now the family is in the real estate business in a big way. Presented maps, etc. . Mark Quincy (Brokerage & Development) and Aaron Ligon (Residential & Commercial Development). Together they walked the property and surveyed areas around that east side of Rock Hill and a radius around Ebenezer. After they said "not interested", they were told they could have it for \$1,000,000.00+. Was advised to take it. Then, their advice was to donate Lot 175 to a charity in order to get something out of it - tax deduction and to offer individual pieces of Area C to nearby residents who might like to have bigger lots. Sub-divide Area B and sell individual lots that would support a septic tank. That way we could realize some gain. If that could be done, we could get maybe \$600,000.00 to \$700,000.00.

E. SPERRY VAN NESS/ SOUTHERN COMMERCIAL REAL ESTATE. Charlotte and York County. Mark Mayfield, Managing Director. All info and maps given. Absolutely no interest after 4 follow-ups. Did not respond to final, "bargain offer".

F. THOMASSON COMMERCIAL DEVELOPMENT. Mr. Broadus Thomasson (U. of Ga. star and Hall-of-Fame) and his three grown sons . Respected and successful builders in three states. Firm cash offer of \$1,000,000.00 after many meetings. Intent-to-Purchase document is contingent on bank loan approval. Offer expires 10/1/07. This offer is the one that was "shopped" with others in an attempt to squeeze even higher offers (as Marjie and Marvin recommended as a strategy).

Corporation attorney is kept informed of all bidding, appraisal, and "bid-up pressure tactics". Our L.L.C attorney has over 45 years experience in working with all types and sizes of realty transactions, deals, etc. . On several occasions he has advised, "I don't think that land is worth that much. Take the money and run to the bank".

The precious deal that I've put together ain't a done-deal yet! Let me know what the next step might be. It might be time to turn the common property over to a real estate agent and let that agent find a buyer(s). The developers are the ones who operate in the circles of those who could invest. What do you think? Send me a letter or e-mail,

tommy

Wednesday, August 29, 2007 America Online: CharlusOff

RBH 001574 18

David Burton

From: <CharlinsOff@aol.com>
To: "Marjie&Marvin" <sloanmburton@hotmail.com>; "David" <DBurton4@nc.rr.com>; "Sara" <sara.TheFamilyConnection@cots-homeless.org>; "Albert" <treblard@comcast.net>; <JONESCLIPPER@aol.com>; "Donn" <teamjohnson@charterinternet.com>; "Bob" <bcato03@earthlink.net>
Sent: Monday, August 20, 2007 12:28 PM
Subject: Burton questions on "TECato LLC letter of 8/1/07"

Dear Marjie and Marvin,

Sorry its taken a couple of weeks to answer your e-mail. Cookie has recovered well from the loss of her Mother. Thanks for your patience.

I'll try and answer your questions and will follow your paragraph numbering:

1. Because some heirs and children of heirs have expressed interest in owning land. In particular, David Burton and I had a long conversation on 3/19/07 to the effect that he never wanted to sell that land. Tom and Bob offered to sell out our interest in Granddaddy's property to David, but he did not take us up on that offer to be a 20% owner. Others on the family also have the money and may like to be developers of the entire site. That opportunity was made available four months later to everybody. I was trying to be fair. Also, in April of 1985, Jane, Cathy, Sarah, Bob, and Tommy made a written offer to Lib, Marjie, and Helen to buy those five out of their combined 40% ownership. The offer letter and two of the three replies are on file. So, everyone in the family has had a shot at buying parts or the whole.

2. That price is the highest offer I've been able to squeeze from the eight developers I've been working with over the last six months. It's the result of appraisals and competitive offers and counter-offers. I played one off against the other as a strategy that you and Marvin discussed with me at your house on 6/1/07. It wouldn't be fair to allow one of our relatives to buy at less than we've been offered. Please refer to the details of those negotiations in the nine letters and reports I've sent you (so far).

3. Your concerns about fifths is valid. The net effect would be as you suggest. That land is owned by the Corporation. Any buying and selling among the partners would be monitored by an attorney to protect everyone else in the Corporation.

4. See your "#1.". My intentions are to follow the consensus instructions that I received from each heir during surveys, correspondence, e-mails, conferences, telephone calls, and including personal visits like the 10-hour meeting (including the lunch you shared with me) that you and Marvin and I had going over all the documents of the L.L.C. while at your dining room table on 6/1/07. Since no one in our extended families showed any interest in owning the property in part or in total, a Letter of Intent to Purchase was accepted by the Corporation on 8/3/07 at 2:00 P.M. - giving an extra two hours past the 12:00 noon deadline. I really thought your family might want to buy the property and develop it; everyone else wants out and wants to sell and quit paying property taxes.

5. David was the only one to receive two letters. Everyone else got only one. I sent him a duplicate copy of the e-mail through the U.S. Mail as an explanation and apology for leaving his name (but of course not his e-mail name and address that was included with all the others) from the 13-name list of relatives. So, everyone was treated the same but David got one more than anyone else.

6. The same presentation of the L.L.C., deed, and S.C. License Application was given the same way to each signatory. The percentages of ownership were included in the L.L.C. document and you and I and Marvin reviewed them. There was no questioning of ownership percentages by any heir I met with - I guess it's pretty straight forward. The implementation of a Corporation is what you and Marvin have been working on for 30 years - I kept all those typewritten copies all this time. Bud Burton was ready to implement a L.L.C. per his letter to "Cato Family Members (and heirs)" dated 4/23/98 and 3/25/99 - I kept those, too. The 3/25/99 letter from Bud promised L.L.C. implementation. Everyone signed off and supported that. Dale Dove was to set up the L.L.C. and also was going to buy the property for a hoped-for \$613,000.00. according to Bud's report (I have that). Everyone agreed to the Dale Dove deal. Now, all the heirs have agreed that Tommy's turn has come to be in charge and that interests in the Corporation are the same as the percentages of ownership. In the Corporation, no one has "veto power" over the majority.

I really appreciate your concern for liability from exposure to developers, but nothing I do is without consultation with the

RBH 001575

210/2000
01919

Corporation Attorney and the Corporation C.P.A. . Since I am neither an attorney nor a C.P.A., their oversight and involvement (as I've stated over and over in letters to the helrs to seek their input and to seek their advice) is necessary to protect the partners and to protect the Corporation. Continuing and ongoing consultations take time and money, but those "consults" represent insurance against risk. Anyway, these activities were outlined during all our planning letters, meetings, and phone calls as we all agreed on this present course of action. I'm trying to stay that course. Be assured, no one misunderstands the authority of the Corporation.

7. Yep. I was in the process of getting a copy of everything into a fat 3-ring binder for you (as promised). It will contain a new map, Corps Waterway maps, gulleys, new roadway, etc. . It has so much in it that it weighs about four pounds! It'll be a central place for all the "stuff".

Thanks for writing me,
Tommy

Letter references from:

Bud	11/16/96, 4/23/98, 4/28/98, 8/10/98, 3/25/99, 3/31/99, 12/31/04
Marjie & Marvin	6/2/67, 7/31/68, 2/28/69, 5/5/94, 11/26/99, 3/20/07, 3/21/07
Tommy	2/24/07, 4/9/07, 6/21/07, 7/12/07, 7/18/07, 7/29/07, 7/31/07, 8/1/07, 8/16/07

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Checked by AVG Free Edition.

Version: 7.5.484 / Virus Database: 269.12.0/961 - Release Date: 8/19/2007 7:27 AM

RBH 001576

01920

Subj: Tommy's activities to Helen, SM & MCBurton A/B Trust, Donn, Jane, Cathy, & Bob
Date: 7/12/07 1:53:51 P.M. Eastern Daylight Time
From: CharInsOff
To: teamjohnson@charterinternet.com, JONESCLIPPER, bcato03@earthlink.net

T.E. Cato Estate L/L/C.

ACTIVITY REPORT TO PARTNERS : 2/8/07 - 7/11/07

2/08/07 Meet with attorney in Rock Hill to review property history and options. Meet with Will Jordan of Tuttle Development in Rock Hill. Go to York to verify tax appraisals and ownership listings at Clerk of Court records room. Mail 7 letters to "et al".

2/19/07 Telephone conference with attorney regarding 1031 Tax-Free Exchange and how that would affect sale if a lot on Cato Estate was "identified" to IRS as a "target" for a 1031 Exchange monies by a prospective buyer. No effect.

2/24/07 Prepare and mail letters to "et al" and large property map to Margie and others who were without plat maps.

2/26/07 Walk "common lots" and "Area A" at property. Try to identify lot lines.

3/19/07 Telephone conferences with "et al"s in Raleigh, Kinston, Memphis, Rock Hill, Greenville, and Richmond seeking their wishes on property and how to proceed.

3/30/07 Review property potential with Thomasson Developers in Rock Hill. Review LLC characteristics with Charlotte C.P.A. Louis Stables for any advice and assurance that LLC protects each partner and is best vehicle for moving property and avoiding tax complications. Review implications of LLC to each heir with Rock Hill attorney Pitts. Was assured LLC is best vehicle to protect and empower heirs. Reviewed tax implications - none.

4/09/07 7 letters and reports to "et al"s.

4/14/07 Sail to Mexico. Return 4/21/07.

4/22/07 Cookie's only brother dies. Funeral and visitations to 4/26/07.

4/26/07 N.C. Real Estate Licensing continuing education.

5/01/07 Meet with Thomasson Development to allow them to understand LLC being set up and to understand other input and bids were being sought. LLC was not rushing to commit to accept any early offer. Discovered their cash would not be available until late June or early July anyway.

Thursday, July 19, 2007 America Online: CharInsOff

RBH 001577
01921

5/09/07 Visit County Courthouse in York. Met with Zoning Dept., Planning Dept., and Wetlands Regulation people about restrictions and inhibitions placed on property by myriad Federal, County, and State Regulations. One bizarre regulation with severe penalties is the "Grand Tree Protection" law!

5/10/07 Telephone consultation with Marjie and Marvin about course to take and advisability of LLC, etc. Then contacted "et al"s for input and suggestions. Phoned attorney and told him to proceed with LLC - that "et al"s are in agreement.

5/14/07 Trip to York County Courthouse to research the type of ownership by each "et al". Only one heir has a Trust. Had previously been told that two heirs had Trusts. This information necessitated that documents be rewritten by attorney.

5/18/07 Put together master package for prospective buyers and for each heir. Heirs expect binder with maps and pertinent documents.

5/20/07 Wilmington, N.C. for Blue Cross meeting. Return 5/23/07.

5/30/07 Pick up LLC papers from attorney and drive them to Mt. Holly for Cathy & Jane signatures and Notary. Verify Tax Codes in documents with York County tax bills.

5/31/07 Drive to Kinston, N.C. to get Bob to sign and notarize everything.

6/01/07 Drive to Raleigh, N.C.. Marjie & Marvin sign for the SMB & MCB A/B Trust and take Tommy to lunch. Back to Lake Wylie, S.C. at 10:30 P.M..

6/04/07 Drive to Simpsonville, S.C. and meet with Donn at his office. Return home the same day.

6/05/07 Drive back to Mt. Holly, S.C. to see Jane & Cathy. Tommy stupidly didn't point out all the signature lines.

6/06/07 A number of long distance calls to Richmond, Virginia and Memphis, Tennessee to determine whether Tommy needs to fly to there. Not necessary. Clipper will take documents to Helen. Phoned Helen's personal attorney to confirm her status and type of ownership of property. Put Helen's personal attorney in touch with our LLC attorney and they spoke to one another to verify transactions.

6/07/07 Overnite mail envelopes to Memphis with LLC documents for Helen's notarized signatures.

6/11/07 Go to Rock Hill attorney with documents to correct signature line. No Trust in Memphis. Helen retains her S.C. property in her own name. Re-mail

everything Overnite Express Mail as before.

6/15/07 Receive phone calls from three developers asking if LLC completed yet. Explain delays. Several phone calls to and from "et al"s and others in The Family with interest in what's going on.

6/18/07 Tommy goes to Mt. Holly again because Tommy made another omission with the Cathy & Jane signature spots. Cathy & Jane accuse Tommy of making excuses to come and see them. Take finalized LLC documents to Rock Hill attorney. Make copies at Kinkoes.

6/25/07 Deliver maps, plat numbers, tax receipts to Will Jordan at Tuttle Development. Contact surveyor at Williams Engineers to discuss possible survey of remainder of "Area A", redrawn "Area B", and remainder of Lot #42.

6/26/07 Get \$14,000.00 from retirement fund for possible use on Estate expenses. Put in checking/savings.

7/03/07 Deliver maps and parcel numbers to surveyor in Rock Hill. Awaiting cost estimate due about 7/15/07. Walk remains of "Area A" and walk over "Common Lot #98" on Hilldale Road. Accosted by three residents while on site. They had never seen a Cato and were excited to find out that there really was such a thing.

7/09/07 Telephone conferences: Mark Quincey at Kuester Real Estate Development near Tega Cay, S.C., Joan Brauning about purchase of Lot #98 for her daughter, Chris Thomas of Childress Klein Properties in Charlotte, N.C., surveyor Ed Woodward to locate stakes on Lot #98, attorney Pitts about reputations of various people and companies, Eric Lockamy about Ebenezer Church interest in acquiring roadway across "Area A", Tony Berry at Berry Development in Rock Hill, Lynn Jenkins at Southern Commercial Real Estate of Charlotte and Rock Hill, Warren Norman of Warren Norman Developers in Rock Hill.

7/10/07 Two hour meeting and review of all options for sale or development with Will Jordan of Tuttle Development in Rock Hill. Visit Warren Norman Developers. Visit Berry Development. One hour meeting and review with Manager and Asst. Manager of Development at Kuester Properties.

7/11/07 Deliver "package" of information material to Chris Thomas, Development manager at Childress Klein Properties, Charlotte, N.C. Prepare activity report for heirs. Night phone call from Tuttle Co. with offer to manage entire property for 8% to 10%. Good and helpful advice received on direct and immediate opportunities without their involvement. If we sell the easiest, they'll still take the leftovers. Suggested that prime prospects usually are the best because they have a special interest. Mr. Jordan also suggested asking prices for some

parcels. Alternatively suggested that engineering studies on all parcels would in making parcels more attractive by spelling out "best use" to prospects during a presentation. Engineering studies would range from \$1,000.00 to \$4,000.00 for each parcel. Tommy seeks to avoid that expense. A luncheon meeting with cash-offer people is planned for last week in July. Tommy plans to firm up any interest by the other developers by then.

Get a sneak peak of the all-new AOL.com.

EXHIBIT B

RBH 001581
01925

From: "Roger B. Jellenik" <rbjattv@mac.com>
Subject: Cato et al. v. Burton as Trustee, Case No. 2008-CP-48-3171 - Request for Information
Date: April 15, 2009 12:05:07 PM EDT
To: "Carroll M. Plitts, Jr., Esq." <CPlitts@rbh.com>
Bcc: David Alan Burton <dburton4@nc.rr.com>
1 Attachment, 28.3 KB

04-15-2009...pdf (28.3 KB)

Carroll:

I hope that this e-mail finds you well. Unfortunately, I have heard no change in your client's position. Therefore, we have reached the point where further steps must now be taken on behalf of my client in the referenced action, as to which please refer to the letter attached in .pdf format. A "hard copy" of this letter will also be mailed to you today.

Please feel free to contact me if you wish to discuss anything.

Regards,

Roger B. Jellenik
Attorney at Law
rbjattv@mac.com
T.803-424-1919
F.803-424-1922

This message may contain confidential or proprietary information and is intended for the addressee only. Please destroy if received in error and notify the sender by return e-mail.

RBH 001582

01926

ROGER B. JELLENIK
ATTORNEY AT LAW

1111 Broad Street
Camden, SC 29020

Telephone 803-424-1919
Facsimile 803-424-1922
rbjally@mac.com

Wednesday, April 15, 2009

BY E-MAIL AND MAIL

Carroll M. Pitts, Jr., Esq.
Robinson Bradshaw & Hinson, PA
P.O. Drawer 12070
Rock Hill SC 29731

RE: Cato et al. v. Burton as Trustee, Case No. 2008-CP-46-3171
Request for Information

Dear Mr. Pitts:

As you know, I represent Marjorie Cato Burton through her attorney-in-fact, David A. Burton. As you may recall, during our initial telephone conversation on February 19, I requested the following documents and records:

1. A copy of any operating agreement adopted by or on behalf of the T.E. Cato Estate, LLC ("LLC"), which you very kindly sent me a copy of by e-mail later the same day; and
2. A copy of the LLC's minute book, which to date has not been received.

In addition to these items, I have since learned that my client has requested, but not received, the following documents and records from James Thomas Cato, and I am now again formally requesting them on her behalf:

3. A copy of each independent professional appraisal and market appraisal obtained by or for the benefit of the LLC in connection with the marketing of Areas A, B, C, and D ("Areas A-D");
4. A copy of the "intent to purchase" contract entered into on or about August 3, 2007, regarding the proposed acquisition of Areas A-D by or on behalf of Mr. Broadus Thomasson; and
5. Any and all records in the possession or control of the LLC or its manager, Mr. James Thomas Cato, of the consents obtained from the LLC's members with respect to the proposed sale of Areas A-D and with respect to the proposed sale of the Roadbed Tract.

During the middle of March, you and I tried to resolve the differences between our clients amicably and toward that end we met on March 16. Regrettably, you informed me on March 20 that my client should proceed to file pleadings inasmuch as your client did not wish to obtain an appraisal that might have helped to resolve matters without costly, time-consuming, and disruptive litigation. Given your client's position, pleadings are now being prepared and, I expect, will be filed on or before May 1.

Finally, by e-mail letter dated February 28, I requested you voluntarily to disqualify yourself as attorney for the petitioners in the referenced partition action by reason of your past activity and representations regarding events material to the issues in that case. Since that time, it has become evident that issues associated with the third party complaint now being prepared will also raise questions that reinforce my prior request. Therefore, I again ask that you voluntarily disqualify yourself from acting as petitioners' counsel in the partition action now pending. If this issue has not been resolved satisfactorily by 12:00 noon on April 22, I will have no alternative but to re-file the motion with the Court seeking your disqualification. While I take no pleasure in raising this question, evidently there is no alternative.

Please feel free to contact me if you wish to discuss all or any aspect of this letter.

Sincerely yours,

Roger B. Jellenik

RBJ/AMBP 04-15-2009 e-mail ltr to oa Pitts.pages

Enclosure(s): No

Distribution: Client; Chron; File

RBH 001584

01928

From: "Roger B. Jellenik" <rbjatty@mac.com>
Subject: Re Cato Estates
Date: February 28, 2009 7:54:20 PM EST
To: "Carroll M. Pitts, Jr., Esq." <cpitts@rbh.com>
1 Attachment, 25.5 KB

Mr. Pitts:

Attached below in .pdf format is a letter requesting your voluntary withdrawal from the partition action involving Marjorie Cato Burton. Please feel free to call me if you wish to discuss anything concerning this matter.

I regret that this case has to move forward this way, but, given your clients' position, evidently we have no choice.

Regards,

Roger B. Jellenik
Attorney at Law
rbjatty@mac.com

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ROGER B. JELLENIK
ATTORNEY AT LAW

1111 Broad Street
CandLER, SC 29020

Telephone 803-424-1919
Facsimile 803-424-1922
rbjatty@mac.com

Saturday, February 28, 2009

BY E-MAIL

Carroll M. Pitts, Jr., Esq.
Robinson Bradshaw & Johnson, PA
P.O. Drawer 12070
Rock, Hill SC 29731

RE: Cato et al. v. Burton as Trustee, Case No. 2004-CP-46
Request for Voluntary Disqualification

Dear Mr. Pitts:

As discussed, at the request of her son and attorney-in-fact, David A. Burton, I represent the Respondent in the referenced case, Marjorie Cato Burton as Trustee, and you are attorney for the petitioners. However, I recently learned that you formerly represented both petitioners and my client in forming the T.E. Cato Estate, LLC ("Cato Estate LLC"), a South Carolina member-managed limited liability company related to the larger issues implicated here. Also, I expect that a third party complaint will have to be filed against the Cato Estate LLC, which you evidently have also represented. Due to the nature of the claims to be asserted in the third party complaint, I believe it likely that you will, at least, be called as a witness to testify about the conduct of real estate transactions engaged in by the Cato Estate LLC and that company's governance.

As you know, I only accepted this matter quite recently for the purpose of assessing it, after which I learned of this action and the imminent default confronting my client. As we have discussed, without an extension and continuance to gain time to explore options, I have no choice but to file pleadings and otherwise act to represent my client. Therefore, in view of the circumstances set forth above, I must now ask you voluntarily to disqualify yourself from representing the petitioners in the referenced case.

Please favor me with your reply on or before 12:00 noon on March 3, and thank you for your attention to this matter.

Sincerely yours,

Roger B. Jellenik

RBH 001585
01929

RBH 001586
01930

RBH/AMBP 02-28-2009 e-mail ltr to oo Plts, pages

Enclosure(s): No

Distribution: Client; Chron; File

Contracts & Procurement
Professional Responsibility

Elder, Estate, & Probate
Civil Litigation

Real Estate & Construction
Mediation

RBH 001587

01931

RBH 001589

01933

Pitts, Carroll

From: Roger B. Jellenik [rbjatty@mac.com]
Sent: Wednesday, April 29, 2009 6:25 PM
To: Strait, Lynn
Cc: Pitts, Carroll; David Alan Burton
Subject: Re: 08-CP-46-3171 Calo v. Burton

Confirming our telecon this morning,

1. I have requested that the motion to disqualify be heard at the June 1 non-jury term of court. Please assure that, in the interim, Judge Hayes does not sign the proposed order inasmuch as Mr. Pitts has not voluntarily withdrawn, and therefore he should have a full opportunity to have his side of this motion heard.
2. Since a third party complaint will be filed this week, in my opinion, this case involves more than a partition action and will likely require considerable additional time before it is ready for trial.
3. Given the foregoing, in my opinion, the time that will be required for trial, if a trial is needed, will be considerably longer than one hour.

Thank you for your help this morning, and stay healthy!

Roger B. Jellenik
Attorney at Law
rbjatty@mac.com
T. 803-424-1919
F. 803-424-1922

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On Apr 23, 2009, at 4:28 PM, Strait, Lynn wrote:

> Mr. Pitts:
>
> I am working on the docket for the June 1st non-jury term. I have a
> note that the above referenced case could take about 1 hour to try?
> Do you think this is still a fairly good estimate of the time needed?
>
> I will wait to hear from you.
>
> Thank you.
>
> Lynn Strait
> Court Coordinator
> York County Court of Common Pleas
> 2 South Congress Street
> York SC 29745
> lynn.strait@yorkcountygov.com <mailto:lynn.strait@yorkcountygov.com>
> 803-684-8506
>
>

RBH 001591

01935

ROGER B. JELLENIK
ATTORNEY AT LAW

1111 Broad Street
Camden, SC 29020

Telephone 803-424-1919
Facsimile 803-424-1922
rbjatty@mcg.com

Monday, July 20, 2009

BY E-MAIL

Carroll M. Pitts, Jr., Esq.
Robinson Bradshaw & Hinson, PA
P.O. Drawer 12070
Rock, Hill SC 29731

RE: Cato et al. v. Burton as Trustee, Case No. 2008-CP-46-3171
Request for Voluntary Disqualification

Dear Mr. Pitts:

As you know, at the request of her son and attorney-in-fact, David A. Burton, I represent the Respondent in the referenced case, Marjorie Cato Burton as Trustee, and you are attorney for the petitioners. Due to the nature of the claims asserted in the pleadings in this case, I expect that both you and your client, James Thomas Cato, will be called as witnesses to testify about the conduct of real estate transactions engaged in by Cato Estate LLC and that company's governance.

In more than one document, Mr. Cato has stated that you advised him in the course of his efforts to sell the parcels at issue here, an allegation denied by you in our communications. Well, either you did advise Mr. Cato of his obligations under prevailing law with respect to such transactions, or you did not. If you did, then he knew of his obligations and chose to ignore them with implications for the claim(s) asserted against him. If you did not so advise him, then he may not have known of his obligations, but then there may be implications related to potential claims against you.

Since I understood that you did not find counsel to take over for you, I let this issue go in order not to prejudice your client's timely answer. But, given the circumstances set forth above, once again I ask that you voluntarily disqualify yourself from representing the petitioners in the referenced case. Please favor me with a reply by 12:00 noon on July 27, and thank you for your attention to this matter.

Sincerely yours,

Roger B. Jellenik

RBJ/AMBP 07-20-2009 e-mail ltr to oa Pitts.pages

Enclosure(s): No

Distribution: Client; Chron; File

Contracts & Procurement
Professional Responsibility

Elder, Estate, & Probate
Civil Litigation

Real Estate & Construction
Mediation

RBH 001597
01936

Pitts, Carroll

To: Roger B. Jellenik
Subject: RE: Motion to Disqualify

I don't know of anything that I can testify to that will help you prove your case. What areas could I be called to give testimony about?

As previously stated, many times, I only represented James Thomas Cato and I believe that my conversations with him are privileged. So I don't know what the Court can learn from me being a witness.

I had nothing to do with the sale to Thomasson except to tell Tom Cato on an occasion that I thought an offer was too good to turn down.

I thought that we had already had a hearing on the motion that I should withdraw. My understanding is that the Judge ruled that he was not going to order me to withdraw but that I should consider doing it. I have considered it and do not intent to voluntarily withdraw for the many reasons previously stated. I believe that Judge Alford stated that you could do additional discovery to back up your requests, but without additional information, he was not going to so order.

By the way, I didn't fine a request attached.

-----Original Message-----

From: Roger B. Jellenik [mailto:rbjatty@mac.com]
Sent: Tuesday, July 21, 2009 10:43 AM
To: Pitts, Carroll
Cc: David Alan Burton
Subject: Motion to Disqualify

Mr. Pitts:

I hope that you have been well. Regrettably, I still do not see how you can avoid being a witness in this case, and I still do not see how you can avoid the conflict of interest issue. Accordingly, attached is another request that you voluntarily withdraw from this case. I have waited until now so that this situation would not prejudice your client's ability to answer the complaint.

I've also considered your argument that you did not find suitable replacement counsel for Mr. Cato. But it seems to me that it is Mr. Cato's responsibility to find his own counsel.

If I'm missing something here, please feel free to let me know. But otherwise, if you have not withdrawn by noon on Friday, July 24, I will file a renewal of my motion to disqualify you.

Thank you, and regards.

Roger B. Jellenik
Attorney at Law
1111 Broad Street, Box J
Camden, SC 29020-3611
rbjatty@mac.com
T.803-424-1919
F.803-424-1922

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2. You are hereby notified that copying, printing, dissemination, distribution, or storage of this message or the information contained herein is strictly prohibited.

3. You should notify the sender of any unintended recipient by return e-mail.

Thank you.

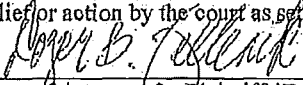
STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTEENTH JUDICIAL CIRCUIT

James Thomas Cato, Helen Cato Jones,
Donn S. Johnson, Jane Cato West,
Robert Lee Cato, and Cathy Cato Evans,
v.

) Case No. 2008-CP-46-3171
)
) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET

Marjorie Cato Burton, as Trustee of the Sloan)
Marvin Burton and Marjorie Cato Burton, AB
Living Trust

Plaintiff's Attorney: Roger B. Jellenik , Bar No. 13546 Address: 1111 Broad Street, Box J, Camden, SC 29020 phone: 803-424-1919 fax: 803-424-1922 e-mail: rbjatty@mac.com other:	Defendant's Attorney: Carroll M. Pitts, Jr. , Bar No. Address: phone: fax: e-mail: other:
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Disqualify Opposing Counsel Estimated Time Needed: 20 minutes Court Reporter Needed: YES / NO	
SECTION II: Motion/Order Type Written motion attached YES Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  04-27-2009 Signature of Attorney for Plaintiff/Defendant Date submitted	
SECTION III: Motion Fee PAID - AMOUNT: EXEMPT: Rule to Show Cause in Child or Spousal Support (check reason) Domestic Abuse or Abuse and Neglect Indigent Status State Agency v. Indigent Party Sexually Violent Predator Act Post-Conviction Relief Motion for Stay in Bankruptcy Motion for Publication Motion for Execution (Rule 69, SCRCP) Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: Other:	
JUDGE'S SECTION Motion Fee to be paid upon filing of the attached order. Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ MOTION FEE COLLECTED: _____ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

RBH 001568
01939

STATE OF SOUTH CAROLINA

FILED-RECEIVED

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

2009 JUN - 1 PM 3:07

CASE NO: 2008CP4603171

IN THE COURT OF COMMON PLEAS

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

James Thomas Cato vs. Marjorie Cato Burton

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), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ 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:

*Motion Denied at this point in the
Action.*

Dated at York, South Carolina, this 15th day of June, 2009.

Court Reporter: PHYLLIS BARRETT


PRESIDING JUDGE - LEE S. ALFORD

This judgment was entered on the 15th day of June, 2009, and a copy mailed first class this 15th day of June, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Carroll M Pitts Jr Robinson Bradshaw &
Hinson, PA P.O. Drawer 12070 Rock Hill, SC
29731

Roger B. Jellenik Roger B. Jellenik Attorney at
Law 1111 Broad St., Box J Camden, SC 29020

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

EXHIBIT 109

Return to:

DEED PREPARED ONLY. TITLE NOT SEARCHED

T.E. Cato Estate, LLC
Attn: James T. Cato
1083 Valley Forge Road
Lake Wylie, SC 29710

QUIT-CLAIM DEED

THIS QUIT-CLAIM DEED is made as of the December day of November, 2007, by and between MARJORIE CATO BURTON, INDIVIDUALLY, AND AS TRUSTEE OF THE MARJORIE CATO BURTON REVOCABLE TRUST AND AS TRUSTEE OF THE SLOAN MARVIN BURTON AND MARJORIE CATO BURTON, AB LIVING TRUST, HELEN CATO JONES, DONN S. JOHNSON, JAMES THOMAS CATO, JANE CATO WEST (a/k/a Martha Jane Cato West), ROBERT LEE CATO, and CATHY CATO EVANS, as party of the first part, hereinafter collectively referred to as "Grantor," and T.E. CATO ESTATE, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the successors and assigns of each of the parties hereto.

WITNESSETH:

WHEREAS, Grantor intended to previously to convey the entirety of its and their interest in the real property located in the Township of Ebenezer, County of York, State of South Carolina, and being known as the "T.E. Cato Estate Property" to Grantee; and,

WHEREAS, a portion of the said T.E. Cato Estate Property, including specifically the real property conveyed to Grantor by deed of the South Carolina Department of Transportation, such deed being recorded in the York County, South Carolina Clerk of Court's Office in Book 8577, at Page 187; and,

WHEREAS, Grantor now wishes to convey to Grantee all of its remaining right, title, and interest in the T.E. Cato Estate Property ("Property"), if any, to Grantee.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is

hereby acknowledged, Grantor has and hereby does grant, bargain, sell, quit-claim, and convey unto Grantee and the heirs, legal representatives, successors and assigns of Grantee, all of Grantor's remaining right, title, and interest, if any, in and to the Property (being described in Exhibit "A," which is attached hereto and incorporated herein by this reference) and all improvements affixed thereto and lying thereupon (with such improvements being considered as a part of the Property), subject, however, to the terms and provisions of this Quit-Claim Deed.

The Property is hereby conveyed to the Grantee subject to all encumbrances which affect the Property, and subject to the interests of all parties which may claim an interest in the Property, excluding Grantor. Grantor makes no warranties of title as to the title conveyed herein, and Grantee accepts such interests as Grantor may convey hereunder subject to all faults relating to the Property's title and condition.

TO HAVE AND TO HOLD the Property, subject to the above easements, restrictions, and exceptions, together with any and all of the rights, members and appurtenances thereof, the same being, belonging or in anywise appertaining to, the only proper use, benefit and behoof of the Grantee forever, on the terms and conditions contained herein.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Grantor has signed and sealed this deed as of the day and year first above written.

GRANTOR:

Signed, sealed and delivered
in the presence of:

_____(W-1)

_____(W-2)

BY:

Marjorie Cato Burton, individually and as
Trustee of the Marjorie Cato Burton Revocable
Trust and as Trustee of the Sloan Marvin
Burton and Marjorie Cato Burton, AB Living
Trust

STATE OF _____)

COUNTY OF _____)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw Marjorie Cato Burton, in the above-referenced capacities and as the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this ____ day
of _____, 2007.

Witness 1 from above

Notary Public for _____; Witness 2 from above

My Commission Expires: _____

[SEAL HERE]

AND

Signed, sealed and delivered
in the presence of:

Douglas E. Jones

Stacy Patton

BY: Helen Cato Jones HJ
Helen Cato Jones

STATE OF Tennessee)

COUNTY OF Shelby)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw Helen Cato Jones, the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 12 day
of November, 2007.

Douglas E. Jones
Witness from above

Stacy Patton
Notary Public for Tennessee: Witness from above
My Commission Expires: 9/30/2008
[SEAL HERE]



AND

Signed, sealed and delivered
in the presence of:

Debra M. Ham 

BY: Donn S. Johnson
Donn S. Johnson

Lois Elighett Mabry (2)

STATE OF South Carolina)

COUNTY OF Greenville)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw Donn S. Johnson, the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 31 day
of October, 2007.

Debra M. Ham
~~Willac S. Johnson above~~

Lois Elighett Mabry

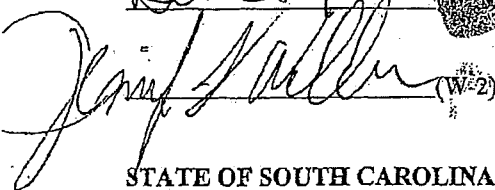
Notary Public for Donn S. Johnson Witness 2 from above

My Commission Expires: 06/03/2015

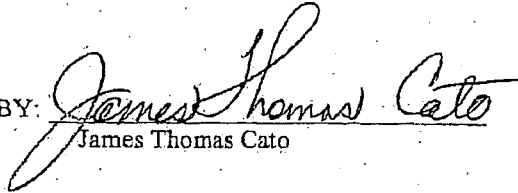
[SEAL HERE]

AND

Signed, sealed and delivered
in the presence of:



(W-2)

BY:


James Thomas Cato

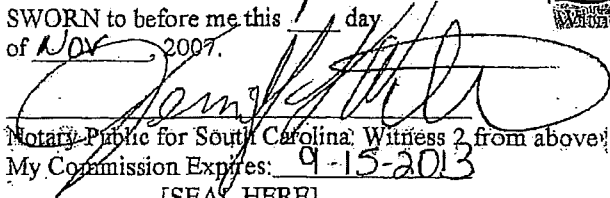
STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF YORK)

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw James Thomas Cato, the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 1 day
of NOV, 2007.


Notary Public for South Carolina: Witness 2 from above
My Commission Expires: 9-15-2013

[SEAL HERE]

AND

Signed, sealed and delivered
in the presence of:

Galindo Talley (W-1)

BY:

Jane Cato West

Jane Cato West (a/k/a Martha Jane
Cato West)

Cathy C. Evans

STATE OF S.C.)

COUNTY OF York)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw Jane Cato West (a/k/a Martha Jane Cato West), the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned; and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 26 day
of October, 2007.

Galindo Talley
Witness 1 from above

Yvonne B. Baker
Notary Public for Cathy C. Evans Witness 2 from above
My Commission Expires: My Commission Expires November 10, 2008
[SEAL HERE]

AND

Signed, sealed and delivered
in the presence of:

Laura B. Cannon (W-1)

BY:

Robert Lee Cato
Robert Lee Cato

Elaine W. Martin (W-2)

STATE OF NC)

COUNTY OF Lenoir)

PROBATE

PERSONALLY APPEARED before me the below signed witness and made oath that s/he saw Robert Lee Cato, the Grantor herein named, sign, seal, and as said Grantor's act and deed, deliver the within written Quit-Claim Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 25th day
of October, 2007.

Laura B. Cannon
~~Witness 1 from above~~

Notary Public for Elaine W. Martin Witness 2 from above
My Commission Expires Feb 24 2012

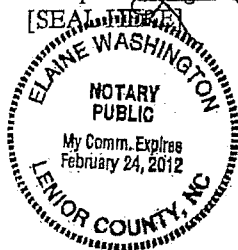


EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

ALL of that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of York, Township of Ebenezer referenced in and quit-claimed by the South Carolina Department of Transportation in the deed recorded in the York County, South Carolina Clerk of Court's Office in Deed Book 8577, at Page 187, et seq., on November 14, 2006, to which deed reference is made for a more particular description as to the courses and distances of the real property conveyed thereby, TOGETHER WITH, all that certain piece parcel or tract of land located in the State of South Carolina, County of York, Township of Ebenezer, shown as Tracts or Areas A, B, C, and D on that certain plat of survey entitled "Composite Plat Showing Subdivision of T.E. Cato Est.," drawn by R.H. Marrett, RLS on December 20, 1967, as revised July 15, 1968, and recorded in Plat Book 33, Page 192 in the Office of the Clerk of Court for York County, South Carolina (being TMS #s 592-02-01-063, 064, 164, and 110).

DERIVATION: This being all or a portion of the property conveyed to the within Grantors by the following deeds or instruments, all of record in the York County, South Carolina Clerk of Court's Office: Book 8577, Page 187, and Estate of T.E. Cato, filed in Case 403, File 12,633; Estate of Elizabeth Cato Johnson; Estate of Edgar Louis Cato filed in Case 531, File 16,229 in the Office of the Probate Court for York County, South Carolina; Estate of James Carson Cato who died in 1966 with the Estate being administered in Mecklenburg County, North Carolina with exemplified copies found in Case 507, File 15476; see also Record Book 9066 at Page 98 in the Office of the Clerk of Court for York County.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

David Alan Burton as Attorney-in-Fact for
Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust

Plaintiff

Case No. 2008-CP-46-3171

v.

COMPLAINT

James Thomas Cato and Thomasson Apts.,
L.L.C.,

Defendants

FILED-RECEIVED
2009 APR 30 PM 2:11
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

THIRD PARTY COMPLAINT

The third party plaintiff, Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, hereinafter referred to as "Plaintiff", complaining of the third party defendants James Thomas Cato, (hereinafter referred to as "Defendant Cato"), and Thomasson Apts., LLC (hereinafter referred to as "Defendant Thomasson LLC"), alleges and says that:

ALLEGATIONS OF FACT: THE PARTIES

1. Plaintiff was born on February 28, 1918, is 91 years of age, resides in Raleigh, North Carolina, and suffers from various infirmities of age.
2. On February 29, 2008, Plaintiff executed a durable power of attorney, a copy of which is attached hereto as Exhibit A, appointing her son, David A. Burton, as her attorney-in-fact.
3. Plaintiff is a Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust ("the Trust"), which was created pursuant to the laws of the State of North Carolina by a Declaration of Trust dated January 19, 2007.
4. As shown by its Certificate of Existence, its Articles of Organization ("Articles"), and/or its Operating Agreement ("Agreement"), all of which are attached hereto as Exhibit B, the T.E. Cato Estate, LLC ("Cato LLC"), was formed on June 26, 2007, and the Agreement became effective as of that date.
5. According to the Articles and the Agreement, Cato LLC is an at will South Carolina limited liability company, the members of which were and, upon information and belief, still are, in one capacity or another, members of the family of Thomas E. Cato, deceased.

6. According to the Articles and/or the Agreement, Defendant James Thomas Cato ("Defendant Cato") was appointed and upon information and belief continues at this time to be the General Manager, as well as a member, of Cato LLC.
7. According to the Articles and/or the Agreement, Plaintiff was an organizer and is a member of Cato LLC.
8. Upon information and belief, Defendant Thomasson LLC is a South Carolina limited liability company and has at this time, for purposes of the Sixth Cause of Action set forth below, been named herein by reason of the fact that it is in the chain of title for the properties that are the subject of this action.

ALLEGATIONS OF FACT: THE PROPERTIES

9. The allegations of fact set forth in paragraphs 1 through 8 above are incorporated herein.
10. Upon information and belief, the parcels of real property known as Area A, Area B, Area C, and Area D (collectively, "the Areas") and an additional parcel contiguous to one or more portions of the Areas known as "the Riverbed Tract" are situated in Ebenezer Township, York County, South Carolina, as more fully described in Exhibit C, attached hereto.
11. On June 1, 2007, as a result of verbal assurances by Defendant Cato that Plaintiff would not be giving up her pre-existing right to consent to any sale of the Areas or the Roadbed Tract, at the instance of Defendant Cato, Plaintiff executed a deed ("Deed into Cato LLC"), attached as Exhibit D, purporting to convey the Trust's 20% fractional interest in the Areas and certain other parcels of real estate to Cato LLC.
12. Upon information and belief, all of the other family members owning fractional interests in the Areas signed the Deed into Cato LLC between May 30, 2007, and June 16, 2007.
13. Upon information and belief, at the time of the formation of Cato LLC and thereafter, the Areas and the Riverbed Tract constituted substantially all of the assets of Cato LLC.

ALLEGATIONS OF FACT: THE SALE OF THE AREAS

14. The allegations of fact set forth in paragraphs 1 through 13 above are incorporated herein.
15. Upon information and belief, Defendant Cato in his capacity as General Manager of Cato LLC solicited one or more offers for the sale of the Areas.
16. On or about July 25, 2007, Defendant Thomasson LLC issued a "Letter of Intent", attached as Exhibit E, offering to purchase the Areas for the sum of \$1,000,000.
17. On August 3, 2007, Defendant Cato executed on behalf of Cato LLC the Letter of Intent agreeing to sell the Areas to Defendant Thomasson LLC for \$1,000,000.

18. On December 12, 2007, Defendant Cato executed, on behalf of Cato LLC, a general warranty deed ("Deed out of Cato LLC"), attached as Exhibit F, purporting to sell the Areas to Defendant Thomasson LLC "FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration".
19. Notwithstanding the wording of the Deed out of Cato LLC, in an accompanying Affidavit attached hereto as part of Exhibit F, "Joshua B. Vann, Attorney" swore that the consideration paid in money or money's worth for the Deed out of Cato LLC was \$900,000.00.
20. At no time up to and including August 3, 2007, was the Plaintiff notified of the existence of the Letter of Intent, the amount of the offer represented thereby, any plan to execute the Letter of Intent, or any request that Plaintiff or anyone else consent to the Letter of Intent or its terms.
21. At no time pertinent to these allegations was Plaintiff ever given
 - a. A copy of the proposed or executed Letter of Intent for sale of the Areas;
 - b. An independent professional appraisal or any other appraisal of the Areas;
 - c. Notice of any meeting of members of Cato LLC to approve sale of the Areas to Defendant Thomasson LLC; or
 - d. Notice of any vote of Cato LLC members regarding the sale of the Areas to Defendant Thomasson LLC.
22. Upon information and belief, at no time pertinent to these allegations was
 - a. An independent professional appraisal of the Areas ever ordered or performed for Cato LLC;
 - b. Any meeting of the members of Cato LLC held to approve the sale of the Areas;
 - c. Any vote of Cato LLC's members taken regarding the sale of the Areas; or
 - d. Plaintiff asked to consent to the Letter of Intent or Deed out of Cato LLC.
23. At no time did Plaintiff consent to sale of the Areas to Defendant Thomasson LLC, execution on behalf of Cato LLC of the Letter of Intent, or execution of the Deed out of Cato.

ALLEGATIONS OF FACT: THE SALE OF THE ROADBED TRACT

24. The allegations of fact set forth in paragraphs 1 through 23 above are incorporated herein.
25. Upon information and belief, all members of Cato LLC, except Plaintiff, have joined in filing a petition ("Petition"), attached as Exhibit G, in Case No. 2008-CP-46-3171, seeking the sale of the Roadbed Tract to Defendant Thomasson LLC and partition of the sale proceeds.
26. The Petition claims that a Contract of Sale for the Roadbed Tract has been entered into, and the document referred to is attached to the Petition as Exhibit A ("Petition Exhibit A") and to this filing as part of Exhibit G.

27. Petition Exhibit A appears to be an amendment to a contract by and between Defendant Thomasson LLC and Defendant Cato Estate LLC, signed by Defendant Cato, but unsigned by Defendant Thomasson LLC, calling, among other things, for sale of the Roadbed Tract to Defendant Thomasson LLC for the sum of \$100,000.00.
28. At no time up to the date of filing of the Petition was Plaintiff herein ever given
- a. A copy of the proposed or executed Petition Exhibit A for sale of the Roadbed Tract;
 - b. An independent professional appraisal or any other appraisal of the Roadbed Tract;
 - c. Notice of any meeting of members of Cato LLC to approve sale of the Roadbed Tract to Defendant Thomasson LLC; or
 - d. Notice of any vote of Cato LLC members regarding the sale of the Roadbed Tract to Defendant Thomasson LLC.
29. Upon information and belief, at no time pertinent to these allegations was
- a. An independent professional appraisal of the Roadbed Tract ever ordered or performed for Cato LLC;
 - b. Any meeting of the members of Cato LLC held to approve the sale of the Roadbed Tract;
 - c. Any vote of Cato LLC's members taken regarding the sale of the Roadbed Tract; or
 - d. Plaintiff asked to consent to Petition Exhibit A.
30. At no time did Plaintiff ever consent to sale of the Roadbed Tract to Defendant Thomasson LLC, or to execution on behalf of Cato LLC of Petition Exhibit A, or to execution of any other contract related to the sale of the Roadbed Tract to Defendant Thomasson LLC, or to filing of the Partition Action for any purpose.

ALLEGATIONS OF FACT: SC CODE 33-44-1101

31. The allegations of fact set forth in paragraphs 1 through 30 above are incorporated herein.
32. Plaintiff is in part commencing this action in the right of Cato LLC inasmuch as any effort to cause Defendant Cato as General Manager to commence this action is not likely to succeed because:
- a. Defendant Cato would be determining whether to seek redress for his own acts and omissions and/or recovery from himself.
 - b. Upon information and belief, the legal issues presented herein have arisen as a direct result of Defendant Cato's continuing course of conduct, and Defendant Cato has evidenced no desire or intent to alter that course of conduct.
 - c. At the present time, Defendant Cato has initiated and is party to a related adversarial legal action against Plaintiff dealing with essentially the same facts as alleged herein.

PLAINTIFF'S FIRST CAUSE OF ACTION

(Individual Action for Declaratory Judgment: Status and Effect of Deed into Cato LLC)

33. The allegations of fact set forth in paragraphs 1 through 32 above are incorporated herein.
34. Cato LLC did not exist at the time of the execution by Plaintiff of the Deed into Cato LLC, did not exist for a period of more than three weeks thereafter, and, indeed, did not exist at the time of execution of that instrument by any grantor.
35. Plaintiff is aware of no precedent in the State of South Carolina on the issue of the validity or effect of a conveyance to a non-existent limited liability company.
36. Under these circumstances, Plaintiff is informed and believes that she is entitled to a declaratory judgment as to the status and effect, if any, of the Deed into Cato LLC including without limitation a determination as to whether that deed is valid as a conveyance to Cato LLC.

PLAINTIFF'S SECOND CAUSE OF ACTION

(Derivative Action for Declaratory Judgment: Status and Effect of Deed out of Cato LLC)

37. The allegations of fact and other contents set forth in paragraphs 1 through 36 above are incorporated herein.
38. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in the right of Cato LLC pursuant to SC Code 33-44-1101.
39. Cato LLC's Agreement provides, in pertinent part, as follows:

1.1 "Act" means the South Carolina Uniform Limited Liability Company Act of 1996. ...

1.6 "Approval" means, with respect to a Member, either the written consent of such Member or the affirmative vote of that Member at a meeting, as the case may be, to do that for which the Approval of such Member is given. ... To be Approved ... requires the requisite level of Approval of the Members provided in Article VI of this Agreement or as otherwise expressly provided by this Agreement, the Act, or other applicable law.

6.3 Manner of Acting. Except as otherwise provided in this Agreement or required by the Act or other applicable law, the Approval at a meeting of a Majority-In-Interest of the Members shall be the act of the Members [Emphasis added]

40. SC Code 33-44-404 provides, in pertinent part, as follows:

(c) The only matters of a ... manager-managed company's business requiring the consent of all of the members are:

(12) the sale ... or other disposal of all, or substantially all, of the company's property with or without goodwill.

41. No provision in the the Articles or in the Agreement contradicts the unanimous consent requirement of SC Code 33-44-404 (c)(12).
42. Accordingly, a declaratory judgment as to the status and effect, if any, of the Deed out of Cato LLC including without limitation a determination as to whether that deed is valid as a conveyance to Defendant Thomasson LLC.

PLAINTIFF'S THIRD CAUSE OF ACTION

(Individual and Derivative Action for Breach of Fiduciary Duty)

43. The allegations of fact and other contents set forth in paragraphs 1 through 42 above are incorporated herein.
44. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in her own right and also in the right of Cato LLC pursuant to SC Code 33-44-1101.
45. SC Code 33-44-409 provides in pertinent part, as follows:
 - (a) The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c).
 - ...
 - (c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
 - (d) A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
 - ...
 - (h). In a manager-managed company:
 - (2) a manager is held to the same standards of conduct prescribed for members in subsections (b) through (f) ...

46. SC Code 33-44-408 provides in pertinent part, as follows:

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter ...

59. As a result of Defendant Cato's fiduciary relationship or duty, he is obligated to account to Cato LLC and Plaintiff for revenues and profits received by Defendant Cato and Cato LLC from any transactions entered into or participated in by Cato LLC involving the Areas and the Roadbed Tract.
60. Upon information and belief, the transactions in dispute in this case appear to involve long or complicated accounts that make it impracticable for a trier of fact to determine the amount of the obligation owed to Cato LLC and Plaintiff.
61. Plaintiff and Cato LLC accordingly are entitled to the entry of an order requiring Defendant Cato to account to Plaintiff and Cato LLC for the full range of financial transactions undertaken in the enterprise, the revenues and profits therefrom, and the disbursement thereof, and to pay over to Plaintiff and Cato LLC all monies owed to them respectively as a result of the breach by Defendant Cato of the fiduciary relationship or duty owed to Plaintiff and Cato LLC.

PLAINTIFF'S SIXTH CAUSE OF ACTION

(Derivative Action for Imposition of Constructive Trust)

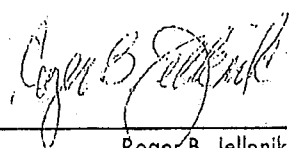
62. The allegations of fact and other contents set forth in paragraphs 1 through 61 above are incorporated herein.
63. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in the right of Cato LLC pursuant to SC Code 33-44-1101.
64. As a limited liability company, Cato LLC is obliged to conduct its affairs in accordance with its Articles, its Agreement, and applicable provisions of prevailing law.
65. Neither the Articles nor the Agreement contradict the provisions of SC Code 33-44-404(c)(12), and therefore those provisions apply to the conduct of Cato LLC's business.
66. Upon information and belief, Defendant Thomasson LLC, is itself a limited liability company operated by business persons experienced in the acquisition of land and the operation of business entities such as corporations, limited liability companies, and partnerships.
67. As such, in the conduct of the transactions at issue in this case, Defendant Thomasson LLC was on notice sufficient to cause it to inquire whether the Letter of Intent entered into by Defendant Cato on behalf of Cato LLC, the subsequent execution and delivery of the Deed out of Cato LLC executed by Defendant Cato on behalf of Cato LLC, the execution of Petition Exhibit A by Defendant Cato on behalf of Cato LLC, and the Petition as filed represented the duly authorized acts of a Cato LLC as a limited liability company.
68. Upon information and belief, Defendant Thomasson LLC failed to conduct any inquiry into the authorization, or lack thereof, for its transactions with Cato LLC.

69. Had such inquiry been conducted by Defendant Thomasson LLC, the failure of Defendant Cato to comply with statutory provisions would have become evident, and these transactions would either have been properly authorized or, alternatively would not have taken place.
70. Under these circumstances, Plaintiff is informed and believes that Cato LLC is entitled to an order declaring that Defendant Thomasson LLC holds the Areas in constructive trust for Cato LLC and is not entitled to acquire the Roadbed Tract unless such acquisition is duly authorized by all members of Cato LLC pursuant to statute and is otherwise proper.

WHEREFORE, Plaintiff respectfully requests that

- A. The Court grant Plaintiff the relief requested in the Plaintiff's first cause of action;
- B. The Court grant Cato LLC the relief requested in the Plaintiff's second cause of action;
- C. The Court grant Plaintiff and Cato LLC the relief requested in the Plaintiff's third cause of action;
- D. The Court grant Plaintiff the relief requested in Plaintiff's fourth cause of action to include compensatory damages and punitive damages;
- E. The Court grant Plaintiff and Cato LLC the relief requested in Plaintiff's fifth cause of action;
- F. The Court grant Cato LLC the relief requested in Plaintiff's sixth cause of action;
- G. The Court award attorney's fees and costs in this matter to the Plaintiff; and
- H. The Court award such other and further relief as it deems justice may require.

Dated this 29th day of April, 2009.



Roger B. Jellenik
Attorney for Third Party Plaintiff
SC Bar No. 13546

Roger B. Jellenik
Attorney at Law
1111 Broad Street, Box J
Camden, SC 29020
803-424-1919
803-424-1922
rbjatty@mac.com

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

David Alan Burton as Attorney-in-Fact for
Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust

Case No. 2008-CP-46-3171

Plaintiff

v.

PROOF OF SERVICE

James Thomas Cato and Thomasson Apts.,
L.L.C.,

Defendants

2009 APR 30 PM 2:11
FILED
CLERK OF COURT
YORK COUNTY, SC

PROOF OF SERVICE

The undersigned, Carole L. Jellenik, hereby certifies that, on April 29, 2009, she caused to be mailed to Carroll M. Pitts, Jr., Esq., attorney for Petitioners at Robinson Bradshaw & Hinson, PA, P.O. Drawer 12070, Rock Hill, SC 29731, James Thomas Cato, 1083 Valley Forge Road, Lake Wylie, SC 29710, and Broaddus L. Thomasson, Sr., 1804 Ebenezer Road, Rock Hill, SC 29732 as Registered Agent for Thomasson Apts., L.L.C., via United States mail, certified mail, postage prepaid, from the offices of Roger B. Jellenik, Attorney at Law, in Camden, South Carolina, copies of this Proof of Service, a Cover Sheet, and the Third Party Complaint with Verification and accompanying Exhibits that also constitutes Exhibit C to the responsive pleading answering the Petition in the captioned action.

This 29th day of April, 2009.

Carole L. Jellenik
Carole L. Jellenik
Administrator

Roger B. Jellenik
Attorney at Law
1111 Broad Street, Box J
Camden, South Carolina 29020
Telephone: 803-424-1919
Facsimile: 803-424-1922

RBH 001567

01958

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

James Thomas Cato, Helen Cato Jones,
Donn S. Johnson, Jane Cato West,
Robert Lee Cato, and Cathy Cato Evans
Petitioners

Case No. 2008-CP-46- 3171

v.

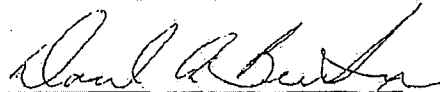
VERIFICATION

Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust
Respondent

2009 APR 30 PM 2:11
DAVID A. BURTON
SC CP & ES
YORK COUNTY, SC

VERIFICATION

As Attorney-in-Fact for Marjorie Cato Burton, David A. Burton, first being duly sworn, deposes and says that he has read the Respondent's "Third Party Complaint" dated April 29, 2009, together with the Exhibits thereto, and that the same are true to his own knowledge, except as to those matters alleged therein upon information and belief, and as to those matters, he believes them to be true.



David A. Burton in his capacity as
Attorney-in-Fact for
Respondent Marjorie Cato Burton

Sworn to and subscribed before me this 29 day of April, 2009.


Notary Public of the State of North Carolina
My Commission Expires: 12-25-2011



RBH 001489

 **COPY**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

David Alan Burton as Attorney-in-Fact for
Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust **and in the Right and on**
Behalf of T.E. Cato Estate, LLC,
Plaintiff

Case No. 2008-CP-46-3171

**AMENDED
COMPLAINT**

v.

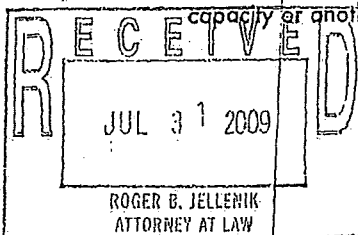
James Thomas Cato and Thomasson Apts.,
L.L.C.,
Defendants

THIRD PARTY COMPLAINT

The third party plaintiff, Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust, hereinafter referred to as "Plaintiff", complaining of the third party defendants James Thomas Cato, (hereinafter referred to as "Defendant Cato"), and Thomasson Apts., LLC (hereinafter referred to as "Defendant Thomasson LLC"), alleges and says that:

ALLEGATIONS OF FACT: THE PARTIES

1. Plaintiff was born on [REDACTED] 1918, is 91 years of age, resides in Raleigh, North Carolina, and suffers from various infirmities of age.
2. On February 29, 2008, Plaintiff executed a durable power of attorney, a copy of which is attached hereto as Exhibit A, appointing her son, David A. Burton, as her attorney-in-fact.
3. Plaintiff is a Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust ("the Trust"), which was created pursuant to the laws of the State of North Carolina by a Declaration of Trust dated January 19, 2007.
4. As shown by its Certificate of Existence, its Articles of Organization ("Articles"), and/or its Operating Agreement ("Agreement"), all of which are attached hereto as Exhibit B, the T.E. Cato Estate, LLC ("Cato LLC"), was formed on June 26, 2007, and the Agreement became effective as of that date.
5. According to the Articles and the Agreement, Cato LLC is an at will South Carolina limited liability company, the members of which were and, upon information and belief, still are, in one capacity or another, members of the family of Thomas E. Cato, deceased.



6. According to the Articles and/or the Agreement, Defendant James Thomas Cato ("Defendant Cato") was appointed and upon information and belief continues at this time to be the General Manager, as well as a member, of Cato LLC.
7. According to the Articles and/or the Agreement, Plaintiff was an organizer and is a member of Cato LLC.
8. Upon information and belief, Defendant Thomasson LLC is a South Carolina limited liability company and has at this time, for purposes of the Sixth Cause of Action set forth below, been named herein by reason of the fact that it is in the chain of title for the properties that are the subject of this action.

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9. The allegations of fact set forth in paragraphs 1 through 8 above are incorporated herein.
10. Upon information and belief, the parcels of real property known as Area A, Area B, Area C, and Area D (collectively, "the Areas") and an additional parcel contiguous to one or more portions of the Areas known as "the Riverbed Tract" are situated in Ebenezer Township, York County, South Carolina, as more fully described in Exhibit C, attached hereto.
11. On June 1, 2007, as a result of verbal assurances by Defendant Cato that Plaintiff would not be giving up her pre-existing right to consent to any sale of the Areas or the Roadbed Tract, at the instance of Defendant Cato, Plaintiff executed a deed ("Deed into Cato LLC"), attached as Exhibit D, purporting to convey the Trust's 20% fractional interest in the Areas and certain other parcels of real estate to Cato LLC.
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14. The allegations of fact set forth in paragraphs 1 through 13 above are incorporated herein.
15. Upon information and belief, Defendant Cato in his capacity as General Manager of Cato LLC solicited one or more offers for the sale of the Areas.
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17. On August 3, 2007, Defendant Cato executed on behalf of Cato LLC the Letter of Intent agreeing to sell the Areas to Defendant Thomasson LLC for \$1,000,000.

18. On December 12, 2007, Defendant Cato executed, on behalf of Cato LLC, a general warranty deed ("Deed out of Cato LLC"), attached as Exhibit F, purporting to sell the Areas to Defendant Thomasson LLC "FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration".
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20. At no time up to and including August 3, 2007, was the Plaintiff notified of the existence of the Letter of Intent, the amount of the offer represented thereby, any plan to execute the Letter of Intent, or any request that Plaintiff or anyone else consent to the Letter of Intent or its terms.
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 - a. A copy of the proposed or executed Letter of Intent for sale of the Areas;
 - b. An independent professional appraisal or any other appraisal of the Areas;
 - c. Notice of any meeting of members of Cato LLC to approve sale of the Areas to Defendant Thomasson LLC; or
 - d. Notice of any vote of Cato LLC members regarding the sale of the Areas to Defendant Thomasson LLC.
22. Upon information and belief, at no time pertinent to these allegations was
 - a. An independent professional appraisal of the Areas ever ordered or performed for Cato LLC;
 - b. Any meeting of the members of Cato LLC held to approve the sale of the Areas;
 - c. Any vote of Cato LLC's members taken regarding the sale of the Areas; or
 - d. Plaintiff asked to consent to the Letter of Intent or Deed out of Cato LLC.
23. At no time did Plaintiff consent to sale of the Areas to Defendant Thomasson LLC, execution on behalf of Cato LLC of the Letter of Intent, or execution of the Deed out of Cato.

ALLEGATIONS OF FACT: THE SALE OF THE ROADBED TRACT

24. The allegations of fact set forth in paragraphs 1 through 23 above are incorporated herein.
25. Upon information and belief, all members of Cato LLC, except Plaintiff, have joined in filing a petition ("Petition"), attached as Exhibit G, in Case No. 2008-CP-46-3171, seeking the sale of the Roadbed Tract to Defendant Thomasson LLC and partition of the sale proceeds.
26. The Petition claims that a Contract of Sale for the Roadbed Tract has been entered into, and the document referred to is attached to the Petition as Exhibit A ("Petition Exhibit A") and to this filing as part of Exhibit G.

27. Petition Exhibit A appears to be an amendment to a contract by and between Defendant Thomasson LLC and Defendant Cato Estate LLC, signed by Defendant Cato, but unsigned by Defendant Thomasson LLC, calling, among other things, for sale of the Roadbed Tract to Defendant Thomasson LLC for the sum of \$100,000.00.
28. At no time up to the date of filing of the Petition was Plaintiff herein ever given
- a. A copy of the proposed or executed Petition Exhibit A for sale of the Roadbed Tract;
 - b. An independent professional appraisal or any other appraisal of the Roadbed Tract;
 - c. Notice of any meeting of members of Cato LLC to approve sale of the Roadbed Tract to Defendant Thomasson LLC; or
 - d. Notice of any vote of Cato LLC members regarding the sale of the Roadbed Tract to Defendant Thomasson LLC.
29. Upon information and belief, at no time pertinent to these allegations was
- a. An independent professional appraisal of the Roadbed Tract ever ordered or performed for Cato LLC;
 - b. Any meeting of the members of Cato LLC held to approve the sale of the Roadbed Tract;
 - c. Any vote of Cato LLC's members taken regarding the sale of the Roadbed Tract; or
 - d. Plaintiff asked to consent to Petition Exhibit A.
30. At no time did Plaintiff ever consent to sale of the **Roadbed** Tract to Defendant Thomasson LLC, or to execution on behalf of Cato LLC of Petition Exhibit A, or to execution of any other contract related to the sale of the Roadbed Tract to Defendant Thomasson LLC, or to filing of the Partition Action for any purpose.

ALLEGATIONS OF FACT: SC CODE 33-44-1101

31. The allegations of fact set forth in paragraphs 1 through 30 above are incorporated herein.
32. Plaintiff is in part commencing this action in the right of Cato LLC inasmuch as any effort to cause Defendant Cato as General Manager to commence this action is not likely to succeed because:
- a. Defendant Cato would be determining whether to seek redress for his own acts and omissions and/or recovery from himself.
 - b. Upon information and belief, the legal issues presented herein have arisen as a direct result of Defendant Cato's continuing course of conduct, and Defendant Cato has evidenced no desire or intent to alter that course of conduct.
 - c. At the present time, Defendant Cato has initiated and is party to a related adversarial legal action against Plaintiff dealing with essentially the same facts as alleged herein.

PLAINTIFF'S FIRST CAUSE OF ACTION

(Individual Action for Declaratory Judgment: Status and Effect of Deed into Cato LLC)

33. The allegations of fact set forth in paragraphs 1 through 32 above are incorporated herein.
34. Cato LLC did not exist at the time of the execution by Plaintiff of the Deed into Cato LLC, did not exist for a period of more than three weeks thereafter, and, indeed, did not exist at the time of execution of that instrument by any grantor.
35. Plaintiff is aware of no precedent in the State of South Carolina on the issue of the validity or effect of a conveyance to a non-existent limited liability company.
36. Under these circumstances, Plaintiff is informed and believes that she is entitled to a declaratory judgment as to the status and effect, if any, of the Deed into Cato LLC including without limitation a determination as to whether that deed is valid as a conveyance to Cato LLC.

PLAINTIFF'S SECOND CAUSE OF ACTION

(Derivative Action for Declaratory Judgment: Status and Effect of Deed out of Cato LLC)

37. The allegations of fact and other contents set forth in paragraphs 1 through 36 above are incorporated herein.
38. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in the right of Cato LLC pursuant to SC Code 33-44-1101.
39. Cato LLC's Agreement provides, in pertinent part, as follows:

1.1 "Act" means the South Carolina Uniform Limited Liability Company Act of 1996. ...

1.6 "Approval" means, with respect to a Member, either the written consent of such Member or the affirmative vote of that Member at a meeting, as the case may be, to do that for which the Approval of such Member is given. ... To be Approved ... requires the requisite level of Approval of the Members provided in Article VI of this Agreement or as otherwise expressly provided by this Agreement, the Act, or other applicable law.

6.3 Manner of Acting. Except as otherwise provided in this Agreement **or required by the Act** or other applicable law, the Approval at a meeting of a Majority-in-interest of the Members shall be the act of the Members ... [Emphasis added]

40. SC Code 33-44-404 provides, in pertinent part, as follows:

(c) The only matters of a ... manager-managed company's business requiring the consent of all of the members are:

(12) the sale ... or other disposal of all, or substantially all, of the company's property with or without goodwill.

41. No provision in the the Articles or in the Agreement contradicts the unanimous consent requirement of SC Code 33-44-404 (c)(12).
42. Accordingly, a declaratory judgment as to the status and effect, if any, of the Deed out of Cato LLC including without limitation a determination as to whether that deed is valid as a conveyance to Defendant Thomasson LLC.

PLAINTIFF'S THIRD CAUSE OF ACTION

(Individual and Derivative Action for Breach of Fiduciary Duty)

43. The allegations of fact and other contents set forth in paragraphs 1 through 42 above are incorporated herein.
44. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in her own right and also in the right of Cato LLC pursuant to SC Code 33-44-1101.
45. SC Code 33-44-409 provides in pertinent part, as follows:

(a) The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c).

...

(c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

...

(h) In a manager-managed company:

(2) a manager is held to the same standards of conduct prescribed for members in subsections (b) through (f) ...

46. SC Code 33-44-408 provides in pertinent part, as follows:

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter ...

47. As the General Manager of Cato LLC, Defendant Cato engaged in grossly negligent or reckless conduct, intentional misconduct, and/or a knowing violation of law in that, regarding Defendant Thomasson LLC's offer and one or more other offers to purchase the Areas, the Roadbed Tract, or one or more part(s) thereof, he failed to secure an appraisal so as to be able to evaluate offers properly and for the guidance of the members; failed to communicate the fact that he was not securing such an appraisal; failed to call a meeting to consider offers; failed to call a vote regarding offers; despite the explicit legal requirement in SC Code 33-44-408(b)(1), failed to provide one or more members of Cato LLC with a copy of the proposed Letter of Intent for sale of the Areas to Defendant Thomasson LLC or even to communicate in a timely manner the fact that the Letter of Intent had been issued and was under consideration; despite the explicit legal requirement in SC Code 33-44-408(b)(1), failed to provide one or more members with a copy of the signed Letter of Intent for sale of the Areas to Defendant Thomasson LLC or even to communicate in a timely manner the fact that he had executed the Letter of Intent on behalf of Cato LLC; despite the explicit legal requirement in SC Code 33-44-404(c)(12), failed to obtain consent of all members before contracting to sell and then deeding over substantially all the assets of Cato LLC to Defendant Thomasson LLC; and then failed in all or nearly all of these same respects all over again with respect to the proposed sale of the Roadbed Tract.
48. In addition to the foregoing, Defendant Cato further engaged in grossly negligent or reckless conduct, intentional misconduct, and/or a knowing violation of law in that,
- a. In allocating and disbursing proceeds of the sale of the Areas, Defendant Cato failed to take into account the need to reimburse legitimate costs and expenses related to the properties incurred by Plaintiff and others, thus unfairly penalizing Plaintiff and others; and
 - b. In filing the Petition and executing Petition Exhibit A, Defendant Cato improperly committed Cato LLC to obligations and commitments that pose a real and substantial risk of economic harm to the interests of Cato LLC and its members.
49. By reason of his course of conduct and persistent failures in repeated transactions, Defendant Cato has breached his fiduciary duty and his duty of care to Cato LLC and specifically to Plaintiff, and, accordingly, Plaintiff is informed and believes that Defendant Cato is liable for such loss or damage to Cato LLC and to Plaintiff as may be proved at trial, which loss or damage is believed to exceed the sum of \$25,000.00.

PLAINTIFF'S FOURTH CAUSE OF ACTION
(Individual Action for Fraud)

50. The allegations of fact and other contents set forth in paragraphs 1 through 49 above are incorporated herein.
51. By representing to Plaintiff on June 1, 2007, that her pre-existing right to consent to any sale of the Areas or the Roadbed Tract would not be altered or affected thereby, Defendant Cato intended to and did in fact induce Plaintiff to change her position by executing the Deed into Cato LLC, thus conveying the Trust's 20% interest to Cato LLC, and Defendant Cato's representation was material in that Plaintiff would not have so acted in its absence.
52. Defendant Cato's own subsequent course of conduct showed that his representation regarding Plaintiff's aforementioned right to consent was false in that the sale of the Areas was pursued without Plaintiff's consent and the sale of the Roadbed Tract is similarly being pursued without Plaintiff's consent.
53. Defendant Cato acted with knowledge that his representation as to Plaintiff's consent was false or with reckless disregard of the truth or falsity of his representation and of Plaintiff's rights.
54. Plaintiff had every reason to believe Defendant Cato's representation as to her right to consent and relied upon Defendant Cato's representations, and it was reasonable for Plaintiff so to believe and rely, because the family had so conducted its affairs regarding the Areas and the Roadbed Tract in that same manner for approximately 50 years.
55. Plaintiff has suffered loss, injury, and damage, and may suffer further loss, injury, or damage as a direct result of Defendant Cato's false and material misrepresentations including but not necessarily limited to unanticipated liabilities for income tax, unreimbursed expenses associated with the Areas and the Roadbed Tract, and fees imposed by Defendant Cato for his "services" in pursuit of the transactions that have caused this litigation.
56. Plaintiff is informed and believes that Defendant Cato is liable for such loss, injury, or damage to Plaintiff as may be proved at trial, which loss or damage it is believed will exceed the sum of \$25,000.00, and also for punitive damages caused by Defendant Cato's intentional or reckless conduct.

PLAINTIFF'S FIFTH CAUSE OF ACTION

(Individual and Derivative Action for Equitable Accounting)

57. The allegations of fact and other contents set forth in paragraphs 1 through 56 above are incorporated herein.
58. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in her own right and also in the right of Cato LLC pursuant to SC Code 33-44-1101.

59. As a result of Defendant Cato's fiduciary relationship or duty, he is obligated to account to Cato LLC and Plaintiff for revenues and profits received by Defendant Cato and Cato LLC from any transactions entered into or participated in by Cato LLC involving the Areas and the Roadbed Tract.
60. Upon information and belief, the transactions in dispute in this case appear to involve long or complicated accounts that make it impracticable for a trier of fact to determine the amount of the obligation owed to Cato LLC and Plaintiff.
61. Plaintiff and Cato LLC accordingly are entitled to the entry of an order requiring Defendant Cato to account to Plaintiff and Cato LLC for the full range of financial transactions undertaken in the enterprise, the revenues and profits therefrom, and the disbursement thereof, and to pay over to Plaintiff and Cato LLC all monies owed to them respectively as a result of the breach by Defendant Cato of the fiduciary relationship or duty owed to Plaintiff and Cato LLC.

PLAINTIFF'S SIXTH CAUSE OF ACTION

(Derivative Action for Imposition of Constructive Trust)

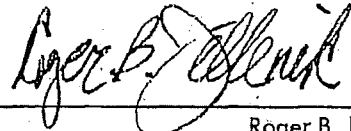
62. The allegations of fact and other contents set forth in paragraphs 1 through 61 above are incorporated herein.
63. Under the circumstances, Plaintiff is informed and believes that she is entitled to bring an action in the right of Cato LLC pursuant to SC Code 33-44-1101.
64. As a limited liability company, Cato LLC is obliged to conduct its affairs in accordance with its Articles, its Agreement, and applicable provisions of prevailing law.
65. Neither the Articles nor the Agreement contradict the provisions of SC Code 33-44-404(c)(12), and therefore those provisions apply to the conduct of Cato LLC's business.
66. Upon information and belief, Defendant Thomasson LLC, is itself a limited liability company operated by business persons experienced in the acquisition of land and the operation of business entities such as corporations, limited liability companies, and partnerships.
67. As such, in the conduct of the transactions at issue in this case, Defendant Thomasson LLC was on notice sufficient to cause it to inquire whether the Letter of Intent entered into by Defendant Cato on behalf of Cato LLC, the subsequent execution and delivery of the Deed out of Cato LLC executed by Defendant Cato on behalf of Cato LLC, the execution of Petition Exhibit A by Defendant Cato on behalf of Cato LLC, and the Petition as filed represented the duly authorized acts of a Cato LLC as a limited liability company.
68. Upon information and belief, Defendant Thomasson LLC failed to conduct any inquiry into the authorization, or lack thereof, for its transactions with Cato LLC.

69. Had such inquiry been conducted by Defendant Thomasson LLC, the failure of Defendant Cato to comply with statutory provisions would have become evident, and these transactions would either have been properly authorized or, alternatively would not have taken place.
70. Under these circumstances, Plaintiff is informed and believes that Cato LLC is entitled to an order declaring that Defendant Thomasson LLC holds the Areas in constructive trust for Cato LLC and is not entitled to acquire the Roadbed Tract unless such acquisition is duly authorized by all members of Cato LLC pursuant to statute and is otherwise proper.

WHEREFORE, Plaintiff respectfully requests that

- A. The Court grant Plaintiff the relief requested in the Plaintiff's first cause of action;
- B. The Court grant Cato LLC the relief requested in the Plaintiff's second cause of action;
- C. The Court grant Plaintiff and Cato LLC the relief requested in the Plaintiff's third cause of action;
- D. The Court grant Plaintiff the relief requested in Plaintiff's fourth cause of action to include compensatory damages and punitive damages;
- E. The Court grant Plaintiff and Cato LLC the relief requested in Plaintiff's fifth cause of action;
- F. The Court grant Cato LLC the relief requested in Plaintiff's sixth cause of action;
- G. The Court award attorney's fees and costs in this matter to the Plaintiff; and
- H. The Court award such other and further relief as it deems justice may require.

Dated this 29th day of July, 2009.



Roger B. Jellenik
Attorney for Third Party Plaintiff
SC Bar No. 13546

Roger B. Jellenik
Attorney at Law
1111 Broad Street, Box J
Camden, SC 29020
803-424-1919
803-424-1922
rbjatty@mac.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

James Thomas Cato, Helen Cato Jones,)
Donn S. Johnson, Jane Cato West, Robert)
Lee Cato and Cathy Cato Evans,)

Case No. 2008-CP-46-3171

Plaintiffs,)

vs.)

Marjorie Cato Burton, as Trustee of the)
Sloan Marvin Burton and Marjorie Cato)
Burton, AB Living Trust,)

Defendant.)

David Alan Burton, as Attorney-In-Fact for)
Marjorie Cato Burton, as Trustee of the)
Sloan Marvin Burton and Marjorie Cato)
Burton, AB Living Trust, and in the right)
and on behalf of T. E. Cato Estate, LLC,)

Third-Party Plaintiff,)

vs.)

James Thomas Cato and Thomasson Apts.,)
LLC,)

Third-Party Defendants.)

Thomasson Apts., LLC,)

Fourth-Party Plaintiff,)

vs.)

T. E. Cato Estate, LLC,)

Fourth-Party Defendant.)

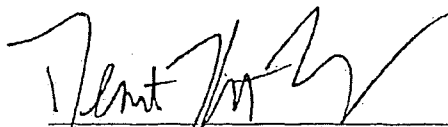
SUMMONS TO
FOURTH-PARTY COMPLAINT

TO: THE FOURTH-PARTY DEFENDANT ABOVE NAMED:

RBH 002218

01970

YOU ARE HEREBY SUMMONED and required to answer the Fourth-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Fourth-Party Complaint upon the subscriber, Callison Tighe & Robinson, LLC, 1812 Lincoln Street, Suite #200, P. O. Box 1390, Columbia, South Carolina 29202-1390, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Fourth-Party Complaint within the aforesaid time, judgment by default will be rendered against you for the relief demanded in the Fourth-Party Complaint.



Demetri K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-256-2371
Facsimile: 803-256-6431

William T. Moody
Joshua B. Vann
MORTON & GETTYS, LLC
334 Oakland Avenue
P. O. Box 707
Rock Hill, SC 29731
Telephone: 803-366-3388
Facsimile: 803-324-3768

ATTORNEYS FOR THIRD-PARTY
DEFENDANT/FOURTH-PARTY
PLAINTIFF THOMASSON APTS., LLC

August 24, 2009

1020.528\Summons-4thParty

RBH 002219

01971

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

James Thomas Cato, Helen Cato Jones,
Donn S. Johnson, Jane Cato West, Robert
Lee Cato and Cathy Cato Evans,

Plaintiffs,

vs.

Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB LivingTrust,

Defendant.

David Alan Burton, as Attorney-In-Fact for
Marjorie Cato Burton, as Trustee of the
Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust, and in the right
and on behalf of T.E. Cato Estate, LLC,

Third-Party Plaintiff,

vs.

James Thomas Cato and Thomasson Apts.,
LLC,

Third-Party Defendants.

Thomasson Apts., LLC,

Fourth-Party Plaintiff,

vs.

T.E. Cato Estate, LLC,

Fourth-Party Defendant.

Case No. 2008-CP-46-3171

THIRD-PARTY DEFENDANT
THOMASSON APTS., LLC'S ANSWER
TO AMENDED THIRD-PARTY
COMPLAINT, COUNTERCLAIM AND
FOURTH-PARTY COMPLAINT

Third-Party Defendant Thomasson Apts., LLC ("Thomasson") hereby answers the
allegations of the Amended Third-Party Complaint ("Third-Party Complaint") of David Alan

RBH 002220

01972

Burton, as Attorney-In-Fact for Marjorie Cato Burton, as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust and in the right and on behalf of T.E. Cato Estate, LLC ("Plaintiff") as follows:

FOR A FIRST DEFENSE

1. Thomasson denies each and every allegation of the Third-Party Complaint not hereinafter specifically admitted.

2. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 1, 2, and 3 of the Third-Party Complaint and, therefore, denies the same.

3. As to the allegations of paragraphs 4, 5, 6, and 7 of the Third-Party Complaint, Thomasson craves reference to the Articles of Organization ("Articles") and/or the Operating Agreement ("Agreement") of the T.E. Cato Estate, LLC ("Cato LLC") for the specific terms and import thereof. To the extent the allegations of paragraphs 4, 5, 6, and 7 are inconsistent with the specific terms and import of the Articles and the Agreement, the same are denied.

4. As to the allegations of paragraph 8 of the Third-Party Complaint, Thomasson admits it is a South Carolina limited liability company. No response is required to the remaining allegations of paragraph 8.

5. As to the allegations of paragraph 9 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

6. Thomasson admits the allegations of paragraph 10 of the Third-Party Complaint.

7. As to the allegations of paragraph 11 of the Third-Party Complaint, Thomasson admits only that Plaintiff executed a deed attached as Exhibit D to the Third-Party Complaint,

which conveyed all of the Trust's interest in and to the real property known as Area A, Area B, Area C, and Area D ("the Areas") and certain other parcels of real estate to Cato LLC. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 11 and, therefore, denies the same.

8. Thomasson admits the allegations of paragraph 12 of the Third-Party Complaint.

9. Thomasson denies the allegations of paragraph 13 of the Third-Party Complaint, and Thomasson would further allege that Cato LLC does not and never has owned the Riverbed Tract, also referred to in the Third-Party Complaint as the Roadbed Tract.

10. As to the allegations of paragraph 14 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

11. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 15 of the Third-Party Complaint and, therefore, denies the same.

12. Thomasson admits the allegations of paragraphs 16 and 17 of the Third-Party Complaint.

13. As to the allegations of paragraph 18 of the Third-Party Complaint, Thomasson admits that on December 12, 2007, Defendant Cato executed, on behalf of Cato LLC, a general warranty deed conveying the Areas to Thomasson and Thomasson would further show that the consideration for this conveyance was \$900,000.00. Thomasson denies the remaining allegations of paragraph 18.

14. As to the allegations of paragraph 19 of the Third-Party Complaint, Thomasson admits that the Affidavit of Consideration attached to the deed shows that the true consideration

for the conveyance from Cato LLC to Thomasson was \$900,000.00.

15. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 20, 21, 22, and 23 of the Third-Party Complaint and, therefore, denies the same.

16. As to the allegations of paragraph 24 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

17. Thomasson admits the allegations of paragraph 25 of the Third-Party Complaint upon information and belief.

18. As to the allegations of paragraph 26 of the Third-Party Complaint, Thomasson craves reference to the Petition for the specific terms and import thereof. To the extent the allegations of paragraph 26 are inconsistent with the specific terms and import of the Petition, the same are denied.

19. As to the allegations of paragraph 27 of the Third-Party Complaint, Thomasson craves reference to Exhibit A of the Petition for the specific terms and import thereof. To the extent the allegations of paragraph 27 are inconsistent with the specific terms and import of Exhibit A of the Petition, the same are denied.

20. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 28, 29, and 30 of the Third-Party Complaint and, therefore, denies the same.

21. As to the allegations of paragraph 31 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

22. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 32 of the Third-Party Complaint and, therefore, denies the same.

23. As to the allegations of paragraph 33 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

24. As to the allegations of paragraph 34 of the Third-Party Complaint, Thomasson admits that Plaintiff signed the subject deed on June 1, 2007, that the remaining grantors under that deed signed the deed on various dates between May 30, 2007 and June 16, 2007, and that the Articles of Organization of Cato LLC were filed on June 26, 2007, but signed on June 16, 2007.

25. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 35 of the Third-Party Complaint and, therefore, denies the same.

26. Thomasson denies the allegations of paragraph 36 of the Third-Party Complaint.

27. As to the allegations of paragraph 37 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

28. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 38 of the Third-Party Complaint and, therefore, denies the same.

29. As to the allegations of paragraph 39 of the Third-Party Complaint, Thomasson craves reference to the specific terms and import of the Agreement. To the extent the allegations

of paragraph 39 are inconsistent with the specific terms and import of the Agreement, the same are denied.

30. As to the allegations of paragraph 40 of the Third-Party Complaint, Thomasson craves reference to S.C. Code Ann. § 33-44-404 for the specific terms and import thereof. To the extent the allegations of paragraph 40 are inconsistent with the specific terms and import of S.C. Code Ann. § 33-44-404, the same are denied.

31. Thomasson denies the allegations of paragraphs 41 and 42 of the Third-Party Complaint.

32. As to the allegations of paragraph 43 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

33. The allegations of paragraphs 44 through 49 of the Third-Party Complaint are not directed toward Thomasson and, therefore, no response is required. To the extent a response is required, Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 44 through 49 and, therefore, denies the same.

34. As to the allegations of paragraph 50 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

35. The allegations of paragraphs 51 through 56 of the Third-Party Complaint are not directed toward Thomasson and, therefore, no response is required. To the extent a response is required, Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 51 through 56 and, therefore, denies the same.

36. As to the allegations of paragraph 57 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

37. The allegations of paragraphs 58 through 61 of the Third-Party Complaint are not directed toward Thomasson and, therefore, no response is required. To the extent a response is required, Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 58 through 61 and, therefore, denies the same.

38. As to the allegations of paragraph 62 of the Third-Party Complaint, each and every allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

39. Thomasson is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 63 of the Third-Party Complaint and, therefore, denies the same.

40. As to the allegations of paragraph 64 of the Third-Party Complaint, these allegations contain conclusions of law and, therefore, no response is required.

41. As to the allegations of paragraph 65 of the Third-Party Complaint, Thomasson craves reference to the Articles, the Agreement, and S.C. Code Ann. § 33-44-404 (c)(12) for the specific terms and import thereof. To the extent the allegations of paragraph 65 are inconsistent with the specific terms and import of the Articles, the Agreement, or S.C. Code Ann. § 33-44-404 (c)(12), the same are denied.

42. Thomasson admits the allegations of paragraph 66 of the Third-Party Complaint.

43. Thomasson denies the allegations of paragraphs 67, 68, 69, and 70 of the Third-Party Complaint.

FOR A SECOND DEFENSE

44. The Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Thomasson.

FOR A THIRD DEFENSE

45. Plaintiff's claims are barred by the doctrine of ratification.

FOR A FOURTH DEFENSE

46. Plaintiff's claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE

47. Plaintiff's claims are barred by the doctrine of estoppel by deed.

FOR A SIXTH DEFENSE

48. Plaintiff's claims are barred by the doctrine of laches.

FOR A SEVENTH DEFENSE

49. Plaintiff's claims are barred by the doctrine of waiver.

FOR AN EIGHTH DEFENSE

50. Thomasson is a bona fide purchaser for value without notice which owns the subject property free and clear of any claims or interests of the Plaintiff.

FOR A NINTH DEFENSE

51. Plaintiff lacks standing to assert some or all of its claims.

FOR A TENTH DEFENSE

52. Plaintiff's claims can only be asserted against Cato LLC or its members pursuant to the South Carolina Limited Liability Company Act of 1996.

FOR AN ELEVENTH DEFENSE

53. Plaintiff's claims as to Thomasson are barred by S.C. Code Ann. § 33-44-310(c), which provides that "[u]nless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument."

FOR A TWELFTH DEFENSE

54. The Third-Party Complaint should be dismissed pursuant to Rule 12(b)(7), SCRPC for Plaintiff's failure to join Cato LLC as an indispensable and necessary party.

**FOR A THIRTEENTH DEFENSE
AND BY WAY OF COUNTERCLAIM AND
FOURTH-PARTY COMPLAINT**

55. Each and every allegation, denial, objection, and/or defense set forth above is re-alleged as if repeated verbatim herein.

56. Fourth-Party Defendant T.E. Cato Estate, LLC ("Cato LLC") is a limited liability company organized and existing under the laws of the State of South Carolina.

57. Pursuant to a General Warranty Deed dated December 12, 2007 and recorded on December 17, 2007, Cato LLC conveyed the Areas to Thomasson.

58. In the General Warranty Deed, Cato LLC agreed to warrant and forever defend the rights and title to the Areas unto Thomasson and Cato LLC warranted that Thomasson would receive fee simple title to the Areas free and clear of any liens or defects.

59. To the extent Plaintiff's claims are valid, which Thomasson denies, Cato LLC is required to defend the claims set forth in the Third-Party Complaint and it has violated the

warranty it gave to Thomasson in the aforesaid General Warranty Deed.

60. As a direct and proximate result of Cato LLC's breach of deed warranty, Thomasson has or will suffer damage and injury.

61. Accordingly, Thomasson is entitled to be indemnified by Cato LLC from the claims asserted against Thomasson in the Third-Party Complaint and Thomasson is entitled to judgment against Cato LLC for any actual and consequential damages Thomasson suffers arising from Cato LLC's breach of deed warranty in an amount to be determined by the Court.

FOR A FOURTEENTH DEFENSE
AND BY WAY OF COUNTERCLAIM AND
FOURTH-PARTY COMPLAINT

62. Each and every allegation, denial, objection, and/or defense set forth above is re-alleged as if repeated verbatim herein.

63. On August 3, 2007, Cato LLC and Thomasson entered into a contract wherein Cato LLC agreed to sell and Thomasson agreed to buy the Areas. The contract was amended on December 6, 2007.

64. Under the contract, Cato LLC agreed to provide fee simple title to the Areas.

65. Under the contract, in any action arising thereunder or relating thereto, the non-prevailing party shall pay the attorneys fees and costs incurred by the prevailing party.

66. Under the contract, Cato LLC had knowledge that Thomasson's purchase of the Areas was pursuant to tax-deferred exchange pursuant to section 1031 of the Internal Revenue Code.

67. To the extent Plaintiff's claims are valid, which Thomasson denies, Cato LLC has breached the contract by failing to provide fee simple title to the Areas to Thomasson.

68. As a direct and proximate result of Cato LLC's breach of contract, Thomasson has or will suffer damage and injury, including incidental and consequential damages, any cost or penalties it may suffer to the extent it loses the tax advantages and benefits under its section 1031 tax-deferred exchange, and the fees and costs in prosecuting this action.

FOR A FIFTEENTH DEFENSE
AND BY WAY OF COUNTERCLAIM AND
FOURTH-PARTY COMPLAINT

69. Each and every allegation, denial, objection, and/or defense set forth above is re-alleged as if repeated verbatim herein.

70. To the extent Plaintiff's claims are valid, which Thomasson denies, Thomasson is entitled to order of this Court requiring that Cato LLC and Plaintiff disgorge all proceeds received by them arising from the sale of the Areas from Cato LLC to Thomasson.

WHEREFORE, having fully answered the Third-Party Complaint, and having asserted its Counterclaim and Fourth-Party Complaint, Third-Party Defendant/Fourth-Party Plaintiff Thomasson Apts., LLC respectfully requests that the Court issue an Order:

- A. Dismissing the Third-Party Complaint;
- B. Awarding Third-Party Defendant/Fourth-Party Plaintiff any relief requested herein;
- C. Awarding Third-Party Defendant/Fourth-Party Plaintiff relief as requested in its counterclaims and Fourth-Party Complaint;
- D. Awarding Third-Party Defendant/Fourth-Party Plaintiff attorney fees and the costs of this action; and

E. Awarding any such other relief as the Court deems just and proper.



Demetri K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202
Telephone: 803-256-2371
Facsimile: 803-256-6431

William T. Moody
Joshua B. Vann
MORTON & GETTYS, LLC
334 Oakland Avenue
P. O. Box 707
Rock Hill, SC 29731
Telephone: 803-366-3388
Facsimile: 803-324-3768

**ATTORNEYS FOR THIRD-PARTY
DEFENDANT/FOURTH-PARTY
PLAINTIFF THOMASSON APTS.,
LLC**

August 24, 2009

1020.528\Answer&4thParty-draft2

James Thomas Cato, *et al.*

vs.

Marjorie Cato Burton, *et al.*

Case No. 2008-CP-46-3171

CERTIFICATE OF SERVICE

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson, LLC, do hereby certify that, on this date, I served the foregoing **Third-Party Defendant Thomasson Apts., LLC's Answer to Amended Third-Party Complaint, Counterclaim, and Fourth-Party Complaint and Summons to Fourth-Party Complaint** upon all counsel of record, by depositing a copy of the same in the United States mail with proper first-class postage affixed thereon, addressed as follows:

Roger B. Jellenik, Esquire

1111 Broad Street

Box J

Camden, SC 29020

*(Attorneys for Third-Party Plaintiff David Alan Burton,
as Attorney-In-Fact for Marjorie Cato Burton, as
Trustee of the Sloan Marvin Burton and Marjorie Cato
Burton, AB Living Trust)*

Carroll M. Pitts, Jr., Esquire

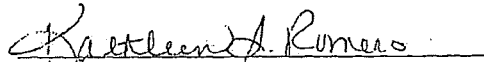
Robinson, Bradshaw & Hinson, PA

140 East Main Street, Suite #420

P. O. Box 12070

Rock Hill, SC 29731

(Attorneys for Plaintiffs/Petitioners)


KATHLEEN S. ROMERO

August 24, 2009

1020.528\COS-Answer&4thParty

RBH 002232

01984

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Marjorie Cato Burton as Trustee
of the Sloan Marvin Burton and
Marjorie Cato Burton, AB Living
Trust, by and through David A.
Burton as Attorney-in-Fact,
Individually and in the right and on
Behalf of T.E. Cato Estate, LLC,)

Plaintiffs)

-V-)

Carroll M. Pitts, Jr., Esq. and
Robinson Bradshaw & Hinson,
P.A.,)

Defendants)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

FILED-RECEIVED
2013 OCT 24 PM 11:22
CLERK OF COURT
YORK COUNTY, SC

Order

File Number: 2010-CP-46-2267

ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT

This matter is before the court on Plaintiffs' motion to amend its complaint in the above-captioned matter. In this motion, Plaintiffs request that they be granted leave to amend their complaint in order to add Joshua B. Vann, Esq., and Morton & Gettys, LLC, as defendants to this action. The Court finds that the addition of these parties to this action at this point in time would be prejudicial to Defendants Robinson Bradshaw & Hinson, P.A. (RBH) and Carroll J. Pitts, Jr., Esq. (Mr. Pitts). Therefore, this motion to amend is DENIED.

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that after thirty days have elapsed since the filing of the original complaint, a party may amend its complaint "only by leave of court or by written consent of the adverse party." Additionally, "leave shall be freely given when justice so requires and does not prejudice the other party." It is well established that a motion to amend is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999). The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. *Id.*

Here, the alleged wrongful conduct occurred in December 2007 and the Plaintiffs instituted litigation by filing a complaint in May 2010. The addition of two new parties more than three years after the original complaint was filed and well over five years after the alleged wrongful conduct occurred would prejudice Defendants RBH and Mr. Pitts. Plaintiffs have had

jc

ample time to add new parties to this action since the commencement of this litigation in 2010. Plaintiffs knew or should have known who all was involved in the transactions giving rise to this lawsuit since the commencement of this litigation. The motion to add two new parties is not based on any recently discovered information; rather, it is based on the same common set of facts that have been known to Plaintiffs for several years. The addition of these parties at this point in the action would significantly delay the resolution of this case and prejudice Defendants by effectively starting the case all over again.

Plaintiffs argue that while they could pursue Mr. Vann and Morton and Gettys in a separate lawsuit, the judicial economy weighs in favor of allowing these two putative defendants to be added to the instant suit. The Court finds the interest in judicial economy in this instance does not outweigh the disruption and prejudice which the addition of these two parties to this suit would occasion.

This ruling is not based on the Statute of Limitations although it would appear to the Court that this would be an appropriate defense for Mr. Vann and Morton & Gettys to assert. However, it is not before the court at this time; rather, it is an affirmative defense. As to Mr. Vann and Morton & Gettys, the Statute of Limitations would arise only in a suit against them in which such defense was raised.

In regard to the "Assignment Agreement" assigning relevant claims, the Court finds that allowing these claims would also prejudice Mr. Pitts and Morton & Gettys because these parties were not involved in the partition litigation and did not participate in discovery relating to those claims.

In regard to the relation back argument raised by Plaintiffs, the Court finds that the claims do not relate back. Even if the Court was to allow the complaint to be amended it finds that the claims would not relate back as to any issues involving the added parties. In Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000), the Court held that "the addition of a party is not the same as a substitution or change of party." The Court will allow for relation back when a party is *substituted* but not when a party is *added* while retaining a party named in the original suit. *Id.* Here, Plaintiffs are attempting to add Mr. Vann and Morton & Gettys rather than substitute them as defendants to this action. There is an important distinction between adding parties to an action and substituting parties to an action. Therefore, the claims asserted against Mr. Vann and Morton & Gettys would not relate back.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's "Motion to Amend Complaint" is DENIED.

BY ORDER OF THE COURT

10/22, 2013
York, S.C.

John L. Henry
FOR York ^{FILED 6:11 PM} COUNTY
#2

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4602267

Marjorie Cato Burton

David A Burton

Carroll M Pitts Jr

Robinson Bradshaw &
Hinson PA

TE Cato Estate LLC

Joshua B Vann

Morton & Gettys Llc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

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

Order Denying Plaintiff's Motion to Amend Complaint

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.

s/John C. Hayes, III

2049

102/22/2013

Circuit Court Judge

Judge Code

Date

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 3/2013)

01987

For Clerk of Court Office Use Only

This judgment was entered on October 24, 2013, and a copy mailed first class or placed in the appropriate attorney's box on October 24, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Roger B. Jellenik 1111 Broad St., Box J Camden, SC 29020-3611
George Hunter McMaster PO Box 7337 Columbia, SC 29202

Samuel W. Outten PO Box 10208 Greenville, SC 29603-0208

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

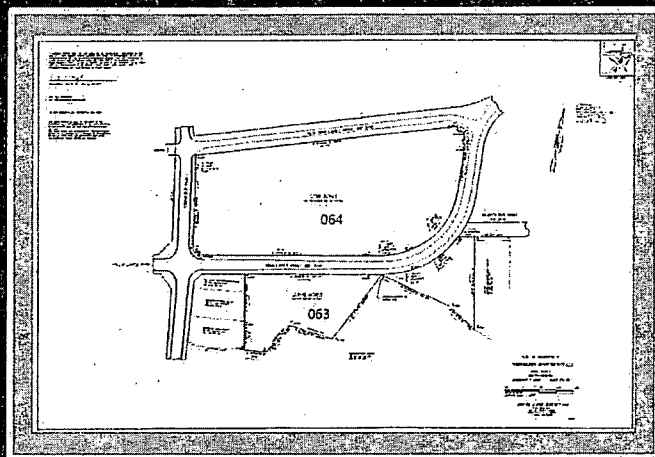
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Valbridge
PROPERTY ADVISORS

Appraisal Report

7.796 Acres & 2.896 Acres of Vacant Land,
Twin Lakes Road at Ebenezer Road
Rock Hill, York County, South Carolina
Report Date: July 21, 2014



PREPARED FOR:

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

Valbridge Property Advisors |
Robinson Company

610 North Main Street
Greenville, South Carolina 29601
864-233-6277 phone
864-233-8577 fax

valbridge.com

Valbridge Job No:
SC-14-0177-000

RBH 004650
01989



610 North Main Street
Greenville, South Carolina 29601
864-233-6277 phone
864-233-8577 fax
valbridge.com

July 21, 2014

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

RE: 7.796 Acres & 2.896 Acres of Vacant Land
Twin Lakes Road at Ebenezer Road
Rock Hill, York County, South Carolina

Dear Mr. Outten:

In accordance with your request, I have prepared a market value opinion for the above-referenced property, presented in this appraisal report. The appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to my market value opinion.

The subject property appraised consists of two tracts of land bisected by Twin Lakes Road, containing 7.796 acres and 2.896 acres, respectively. The tracts are located at or near the intersection of Ebenezer Road and Twin Lakes Road, just outside the Rock Hill city limits, in York County, South Carolina. The subject is further identified by the York County Tax Assessor as County Tax Parcel Nos. 592-02-01-063 and 064.

I developed my analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); the Interagency Appraisal and Evaluation Guidelines; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

Mr. Sam Outten is the client in this assignment and is the sole intended user of the appraisal report. The intended use is to estimate the Retrospective Market Value of the subject property as of *December 1, 2007*. The market value opinion reported herein is subject to the definitions, assumptions and limiting conditions, and certification contained in this report.

Property Identification: 7.796 Acres & 2.896 Acres of Vacant Land
Address: Ebenezer Road at or near Twin Lakes Road
Rock Hill, York County, South Carolina

Assessor's Parcel Numbers: 592-02-01-063 and 064

Client/Intended User: Mr. Sam Outten and/or assigns

Purpose of the Appraisal: Establish a Retrospective Market Value opinion for the property as of December 1, 2007.

Effective Date of Value Opinion: December 1, 2007

Date of Inspection: June 25, 2014

Date of Report Preparation: July 21, 2014

Property Rights Appraised: Fee Simple Interest

Extraordinary Assumptions: In this appraisal, there are no extraordinary assumptions.

Hypothetical Conditions: In this appraisal, there are no hypothetical conditions.

Use of Real Estate
As of the Date of Value: Vacant/Idle
As of the Date of this Report: Vacant/Idle

Highest and Best Use
As Vacant: Transitional
As Improved: N/A

Zoning: Lot 063 = RC-I; Residential Conservation District
Lot 064 = BD-II; Business Development District

Flood Map: 45091C0308E and 45091C0306E, September 26, 2008
(not in flood zone)

Sales History: As of the retrospective date of valuation (December 1, 2007), there had been no recent sales within the previous three years. The subject represents vacant undeveloped raw land.

Scope of Work

Report Development Procedures:

The subject property was inspected on June 25, 2014. Information from public records available was researched along with interviews with local real estate agents, appraisers, and public officials. Comparable land sales were analyzed in order to provide a market value opinion for the subject property as of the retrospective date of valuation (December 1, 2007).

Report Option:

This appraisal is presented in a Restricted Use Appraisal Report format at the client's request and is prepared in accordance with Standards Rule 2(b) of the Uniform Standards of Professional Appraisal Practice. As such, it does not present detailed discussions of the data, reasoning, and analyses that were used in the process to develop the appraiser's opinion of market value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file. The appraiser's opinions and conclusions set forth in this report cannot be understood properly without additional information in the appraiser's work file.

The reader is advised to clearly understand the assumptions and limiting conditions associated with a retrospective market value opinion. As the date of valuation is extended, the reliability of the data and analysis can be weakened.

Subject Site Description

Site Area:

7.796 acres (Parcel 064)

2.896 acres (Parcel 063)

Parcel Location:

Parcel 063 is located on the south side of Twin Lakes Road, just east of the intersection with Ebenezer Road. Parcel 064 is bound by Twin Lakes Road on the south side, Della's Way on the north side, and Ebenezer Road on the west side. Both properties are located just outside the Rock Hill city limits, in York County, South Carolina.

Shape and Topography:

Parcel 063 is highly irregular in shape and has poor topographic features. The eastern portion of the tract is below road grade and has a sloping topography. The tract is wooded. Parcel 064 is at or near road grade and is generally level to just gently sloping. This tract is also wooded.

Utilities:

Public water is available to the subject parcels, although sewer would have to be extended to the subject at the owner's expense. In order to access sewer, the subject would have to be annexed into the city of Rock Hill.

Site Improvements:

None

Comments on Site:

Parcel 063 has limited utility based on poor topographic features and shape. There is a small portion of the site that I have estimated to contain approximately one acre which is considered to be usable, located on the western end of the property. Parcel 064 has extensive road frontage, good topographic features, and good development potential as a single site or subdivision into smaller sites.

Summary of the Valuation Techniques Used

Sales Comparison Approach

Introduction

In the Sales Comparison Approach, the method of estimating market value was to compare the subject property with comparable properties that have recently sold. The premise of the Sales Comparison Approach is that the market will determine a price for the subject property in the same manner that it determines prices of comparable competitive properties. This approach in the appraisal analysis is based upon the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an existing or substitute property with the same utility. It is a process of analyzing sales of similar properties, which have recently sold to arrive at an indication of the most probable sales price for the subject property. The Sales Comparison Approach is used in an effort to compare how buyers and sellers are behaving within the subject market area.

Comparable Sales

Extensive research was completed in the Rock Hill area in order to find comparable sales of similar properties prior to the retrospective date of valuation as of December 1, 2007. Shown on the following pages are detailed descriptions of the sales used in this approach. The sales used are considered to be the most comparable of all sales researched and adequate comparability exists for analysis purposes.

LAND COMPARABLE 1

Property Identification

Property ID 21803
Address West side of India Hook Road at
Hillcroft Place
Rock Hill, York County,
South Carolina
Tax ID/APN 594-00-00-004 & 022

Sales Data

Sale Price \$975,000
Sale Date 4/7/2006
Grantor Ralph May & Martha Lewis
Grantee The Village at India Hook, LLC
Sale Status Closed
Book/Page 7928/277 & 282
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.61/SF
Price/Acre \$69,993/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 13.93 Acres/606,791 SF
Zoning PUD
Usable Land 100 % 13.93 Acres/606,791 SF
Flood Hazard None
Shape Irregular
Topography Gently rolling
Utilities All
Access Average
Primary Frontage India Hook Rd.
Easements None noted

Comments

This tract was annexed into the city limits of Rock Hill as a PUD prior to closing. Tract since developed with an age-restricted townhouse development. There was an old pond site on the tract.

LAND COMPARABLE 2

Property Identification

Property ID 21804
Address North side of S. Herlong Avenue
Rock Hill, York County,
South Carolina
Tax ID/APN 593-08-01-002

Sales Data

Sale Price \$1,474,999
Sale Date 5/19/2005
Grantor Thomas G. Fleischer & William L.
Lehman, Jr.
Grantee Nathan & Julia Sanders and S. T.
Holdings, LLC
Sale Status Closed
Book/Page 7101/84
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.72/SF
Price/Acre \$75,064/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 19.65 Acres/855,954 SF
Zoning OI
Usable Land 100 % 19.65 Acres/855,954 SF
Flood Hazard None
Shape Irregular
Topography Rolling, stream bisects tract
Utilities All
Access Average
Primary Frontage S. Herlong Ave.
Easements None noted

Comments

This tract was purchased for an apartment development (300 units). A stream bisects the tract. No flood plain issues but topography required site work prior to development.

LAND COMPARABLE 3

Property Identification

Property ID 21805
Ebenezer Road at Hollis Lakes
Road
Address Rock Hill, York County,
South Carolina
Tax ID/APN 589-01-01-056

Sales Data

Sale Price \$434,500
Sale Date 8/1/1997
Grantor Kathryn D. Stafford, et al.
US Postal Service Law
Grantee Department
Sale Status Closed
Book/Page 1931/175
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.66/SF
Price/Acre \$72,417/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 6.00 Acres/261,360 SF
Zoning IG N/A
Usable Land 100 % 6.00 Acres/261,360 SF
Flood Hazard None
Shape Regular
Topography Generally level
Utilities All
Access Good
Primary Frontage Ebenezer Rd.
Secondary Frontage Hollis Lakes Rd.
Easements None noted

Comments

This is a corner lot at a signalized intersection..Property since developed with a post office.

LAND COMPARABLE 4

Property Identification

Property ID	21806
Address	West side of Ebenezer Road Rock Hill, York County, South Carolina
Tax ID/APN	593-02-03-003

Sales Data

Sale Price	\$333,608
Sale Date	7/7/1998
Grantor	Kathryn D. Stafford, et al.
Grantee	Buddy Two, LLC
Sale Status	Closed
Book/Page	2310/219
Property Rights	Fee Simple
Financing	Cash to Seller
Conditions of Sale	Arm's Length
Price/SF	\$2.02/SF
Price/Acre	\$87,792/Acre

Property Description

Land Acres or SF	3.80 Acres/165,528 SF
Zoning	OI
Usable Land	100 % 3.80 Acres/165,528 SF
Flood Hazard	None
Shape	Slightly irregular
Topography	Generally level
Utilities	All
Access	Average
Primary Frontage	Ebenezer Rd.
Easements	None noted

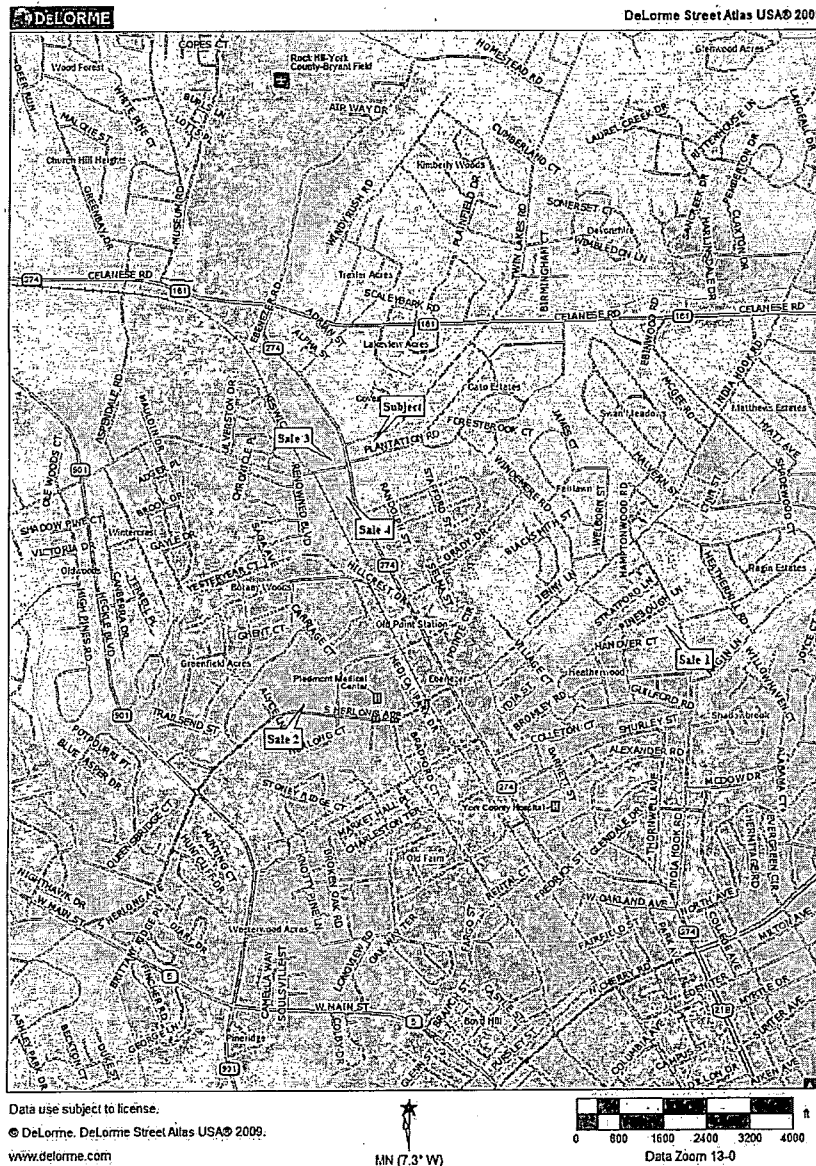
Verification

Confirmed With	Deed/Inspection
Confirmed By	Corbin Haskell 07-08-2014

Comments

This tract is located on the west side of Ebenezer Road, just south of Hollis Lakes Road. Tract since developed with a funeral home.

Land Sales Location Map





Explanation of Adjustments:

The process of forming an opinion of the market value of the land is an appraisal technique in which the present opinion of the appraised land's value is predicated upon prices paid in actual real estate transactions. Adjustments were made to compensate for the differences between the subject site and each comparable site. It is a process of correlation and analysis of data about similar properties that have recently sold.

The utility value between the comparable sales analyzed and the subject are sufficiently similar and good comparability exists for analysis purposes. The foregoing sales represent the most recent activity for this type of property and are the result of a comprehensive survey of similar utilized properties in the subject area. Each comparable sale was analyzed in relation to the subject property with regards to differences in location, land area, street frontage, access, exposure, development utility, zoning, easements, available public utilities, site conditions, and other physical characteristics, which influence value.

A market conditions adjustment based on an annual appreciation rate of 2% has been included with each of the four sales having been adjusted accordingly. Sale 2 required a plus adjustment for size as this tract is substantially larger than that of the subject while Sale 4 required a minus adjustment as this tract is substantially smaller than that of the subject. Sales 1, 2, and 4 each received slight plus adjustments for inferior access/frontage while Sale 3 is adequately comparable under this category.

LAND SALES ADJUSTMENT CHART					
Comparable No.	Subject	1	2	3	4
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Market	Market	Market	Market	Market
Condition of Sale	Arms Length	Arms Length	Arms Length	Arms Length	Arms Length
Date Of Sale	-	4/7/2006	5/19/2005	8/1/1997	7/7/1998
Sales Price	-	\$975,000	\$1,474,999	\$434,500	\$333,608
Location	Ebenezer Rd @ Twin Lakes Rd.	India Hook Road	S. Herlong Ave.	Ebenezer Rd. @ Hollis Lakes Rd.	Ebenezer Road
Physical Characteristics:					
Size: Acres	7.796	13.93	19.65	6.00	3.80
S.F.	339,594	606,791	855,954	261,360	165,528
Shape	Irregular	Irregular	Irregular	Regular	Slight Irreg.
Topography	Gen Level to sloping	Gently rolling	Gently rolling	Gen. level	Gen. Level
Access/Frontage/Exposure	Good	Average	Average	Good	Average
Other	-	-	-	-	-
Sales Price/Acre		\$69,993	\$75,064	\$72,417	\$87,792
ADJUSTMENTS					
Property Rights		-	-	-	-
Financing		-	-	-	-
Conditions of Sale		-	-	-	-
Market Conditions		3.30%	5.07%	20.68%	18.82%
Adjusted Price/Acre		\$72,305	\$78,872	\$87,392	\$104,311
Location		-	-	-	-
Physical Characteristics:					
Size		-	5%	-	-10%
Shape		-	-	-	-
Topography		-	-	-	-
Utilities		-	-	-	-
Zoning		-	-	-	-
Access/Frontage/Exposure		5%	5%	-	5%
Other		-	-	-	-
Total Adjustments		5%	10%	0%	-5%
Final Adjusted Price / Acre		\$75,921	\$86,759	\$87,392	\$99,095
ANALYSIS					
Low	\$75,921				
High	\$99,095				
Mean	\$87,292				
Median	\$87,076				



Summary of Value Conclusions

Prior to adjustments, the four sales used indicate a range of values between \$69,993 per acre and \$87,792 per acre. Adjustments deemed necessary were for market conditions, size and access/frontage. After all necessary adjustments, the four sales indicate a closer range from \$75,921 per acre to \$99,095 per acre with a mean of \$87,292 per acre and a median of \$87,076 per acre.

Therefore, based on the preceding sales and analysis, it is our opinion that the market value of the subject property is \$88,000 per acre. The price per acre is applied to parcel 063 for the approximate 1.0 acre of usable land and the entire parcel 064 containing 7.796 acres, calculated as follows:

Parcel 063

1.0 acres usable X \$88,000/acre = \$88,000

Parcel 064

7.796 acres usable X \$88,000/acre = \$686,048
Rounded to: \$686,000

Total Indicated Value

\$774,000

The above value is a retrospective opinion of market value as of December 1, 2007 based on the best information available and comprehensive analysis. This letter of transmittal is not considered valid if separated from this report and must be accompanied by all sections of this report in order for the value opinions set forth above to be valid.

Respectfully submitted,
Valbridge Property Advisors | Robinson Company

Corbin Haskell, MAI
South Carolina License CG296

General Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Robinson Company will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Robinson Company is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.

11. The information, estimates and opinions which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise which would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Robinson Company and Client.
15. Distribution of this report is at the sole discretion of the client, but no third-party not listed as an intended user on the face of the appraisal or the engagement letter may rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Robinson Company.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. If the appraisal is for mortgage loan purposes: 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income & Expense Projection" are anticipated.
20. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

21. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.
22. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
23. The reader is cautioned the SC Supreme Court in a July 2011 opinion #27013, implied that any party researching the zoning classification of a property should personally inspect the public records via an official zoning map. We have, in fact, researched official zoning maps during the course of other appraisals throughout the state, and have found them to contain errors in certain instances. Therefore, researching "official" zoning maps may not be accurate without additional research by zoning officials or your attorney. The intended user of this report is therefore urged to obtain verification of zoning. Please consult your attorney to ascertain legal and zoning issues as we are not qualified to provide opinions regarding zoning or other legal matters.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a

survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.

27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to



the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Instituted is such disclose is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Robinson Company all agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Robinson Company and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury.
36. Valbridge Property Advisors | Robinson Company shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Robinson Company. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Robinson Company and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment.
37. The value opinion(s) provided herein is subject to any and all predications set forth in this report.
38. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Robinson Company. Neither Valbridge Property Advisors, Inc. (the parent company), nor any of its affiliates (VPAFS, LLC), has been engaged to provide this report. Valbridge Property Advisors, Inc. (the parent company), does not provide valuation services and has taken no part in the preparation of this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.
41. Parcel 063 has limited utility based on poor topographic features and shape. I have estimated approximately one acre to be usable. If the usable size is determined to be different as a result of an engineering study, I reserve the right to amend my value conclusion.



Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the appraisal within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Corbin Haskell, MAI made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person/people signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



13. As of the date of this report, I, Corbin Haskell, MAI have completed the voluntary continuing education program for Designated Members of the Appraisal Institute.

CHaskell

Corbin Haskell, MAI
South Carolina License CG296
chaskell@valbridge.com

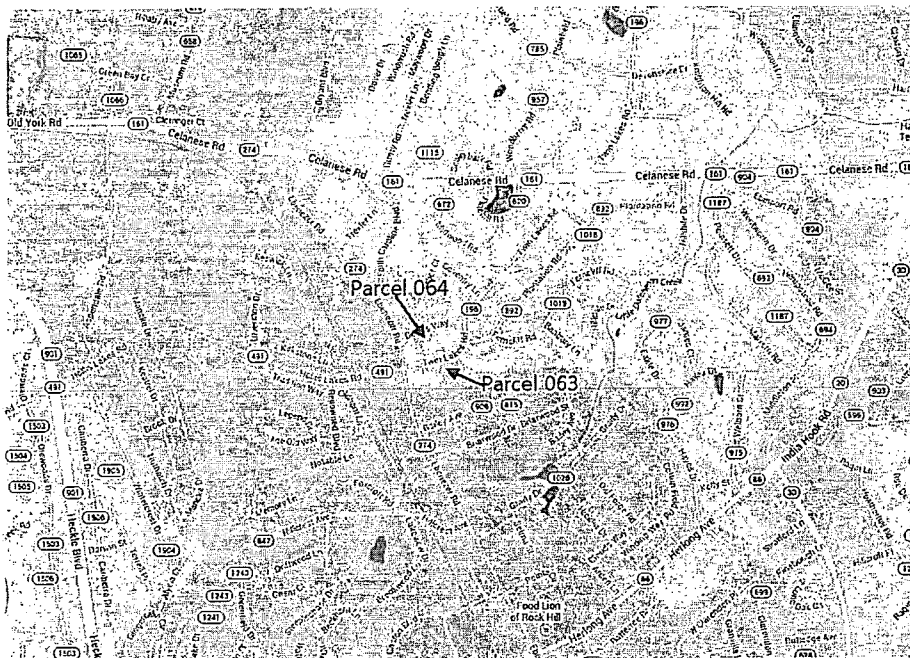
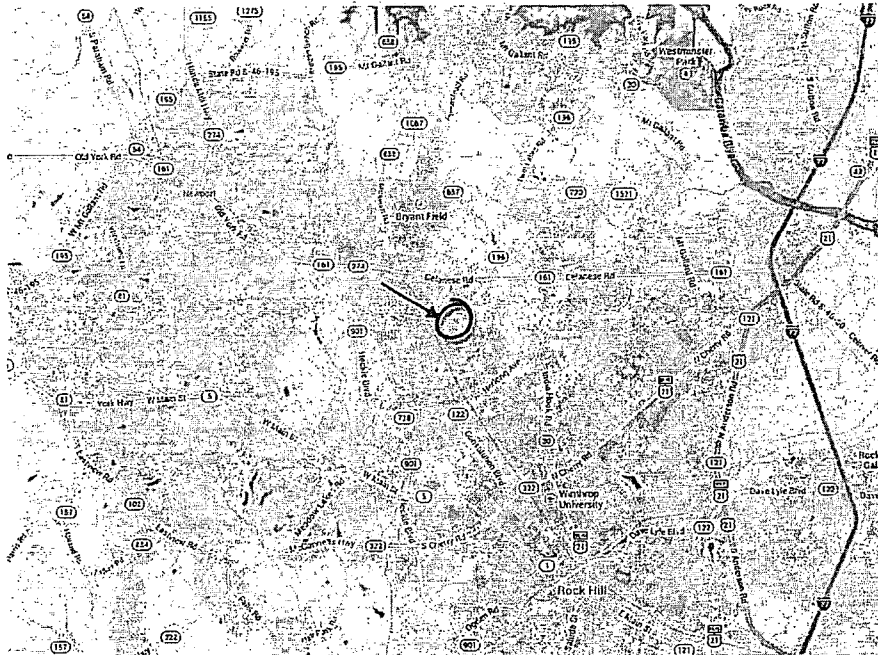


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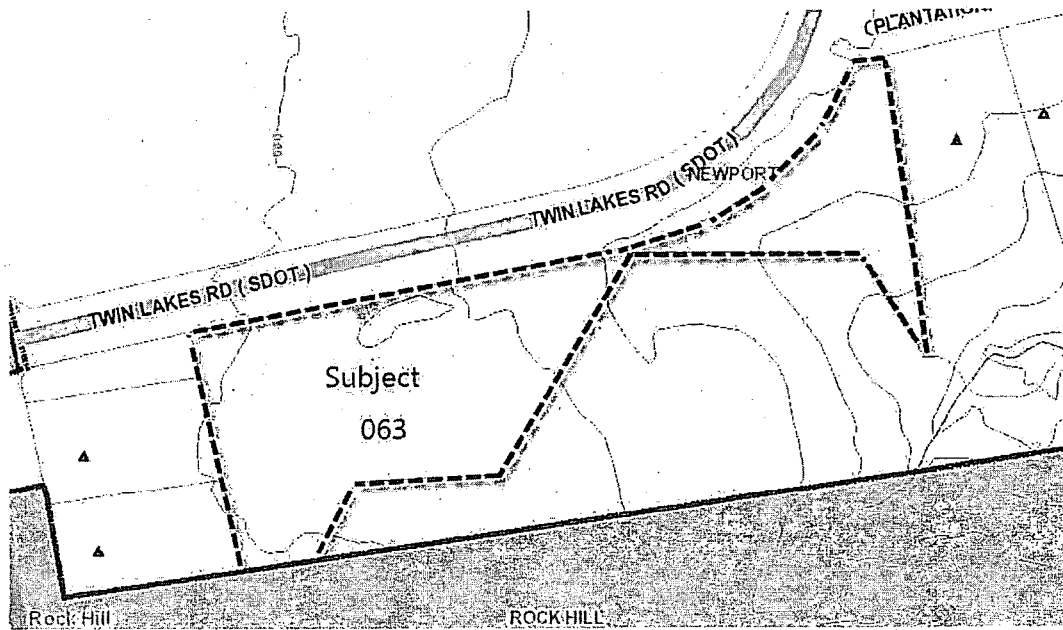
14-177 – THOMASSONAPTS-064
RESTRICTED APPRAISAL REPORT

Addenda

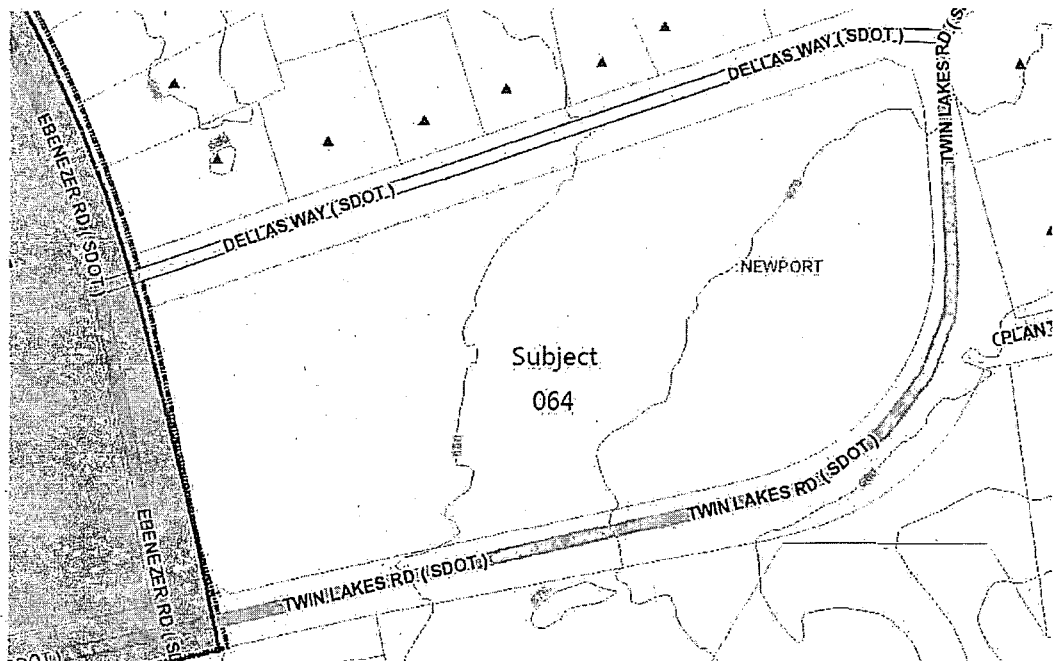
LOCATION MAPS



TOPOGRAPHIC TAX MAP 063



TOPOGRAPHIC TAX MAP 064





PROPOSED DEVELOPMENT

LOT 064
2.08 ACRES
88,800 SQ FT

LOT 063
2.08 ACRES
90,800 SQ FT

EXISTING ROADS:
HIGHWAY 60
HIGHWAY 70
HIGHWAY 60

PROPOSED BUILDINGS:
B-1
B-1

PARKING AREAS:
P-1
P-1

SCALE BAR:
0' 10' 20' 30'

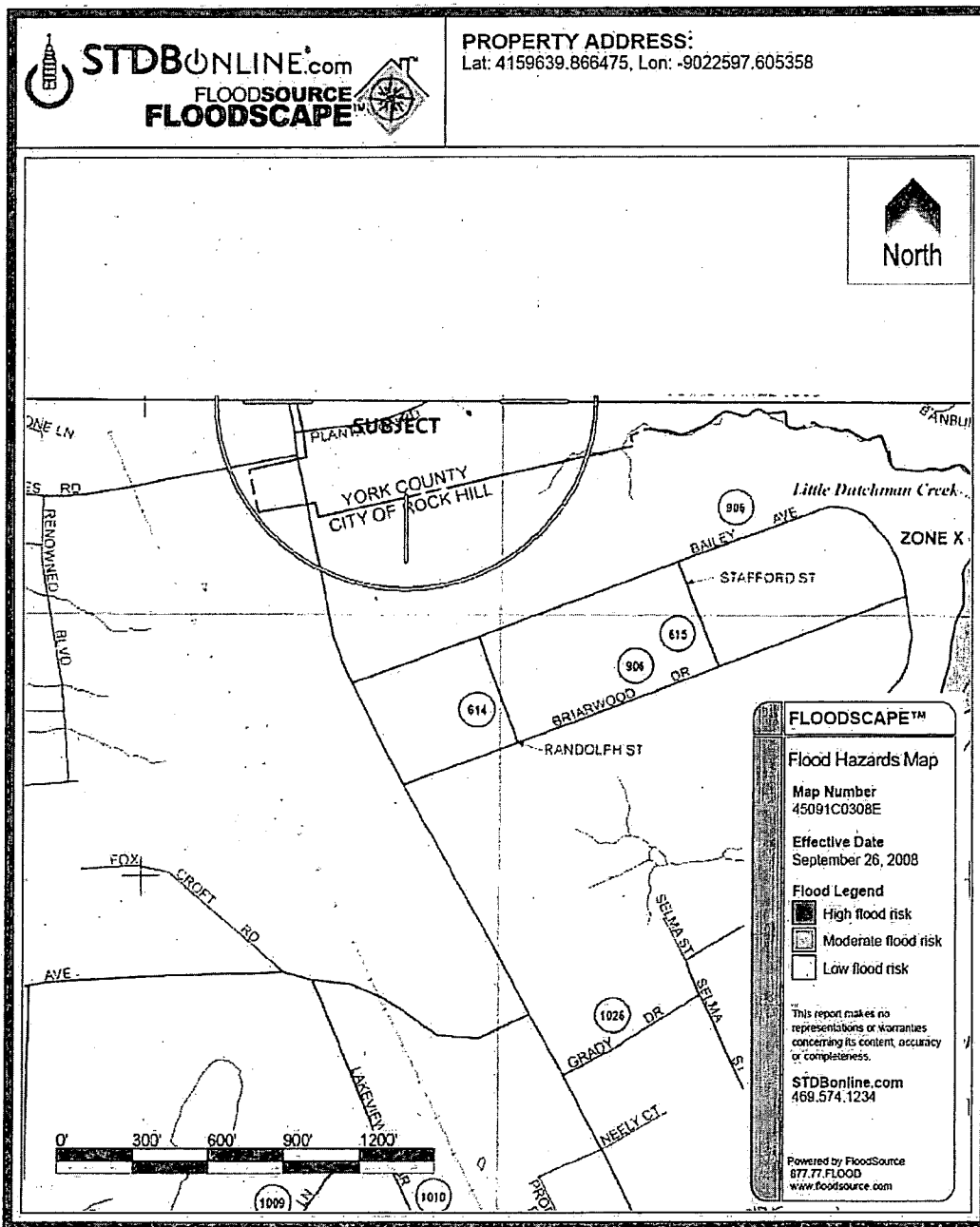
NORTH ARROW

DEVELOPER:
DAVIDSON APARTMENTS LLC

DATE:
JULY 1, 2011

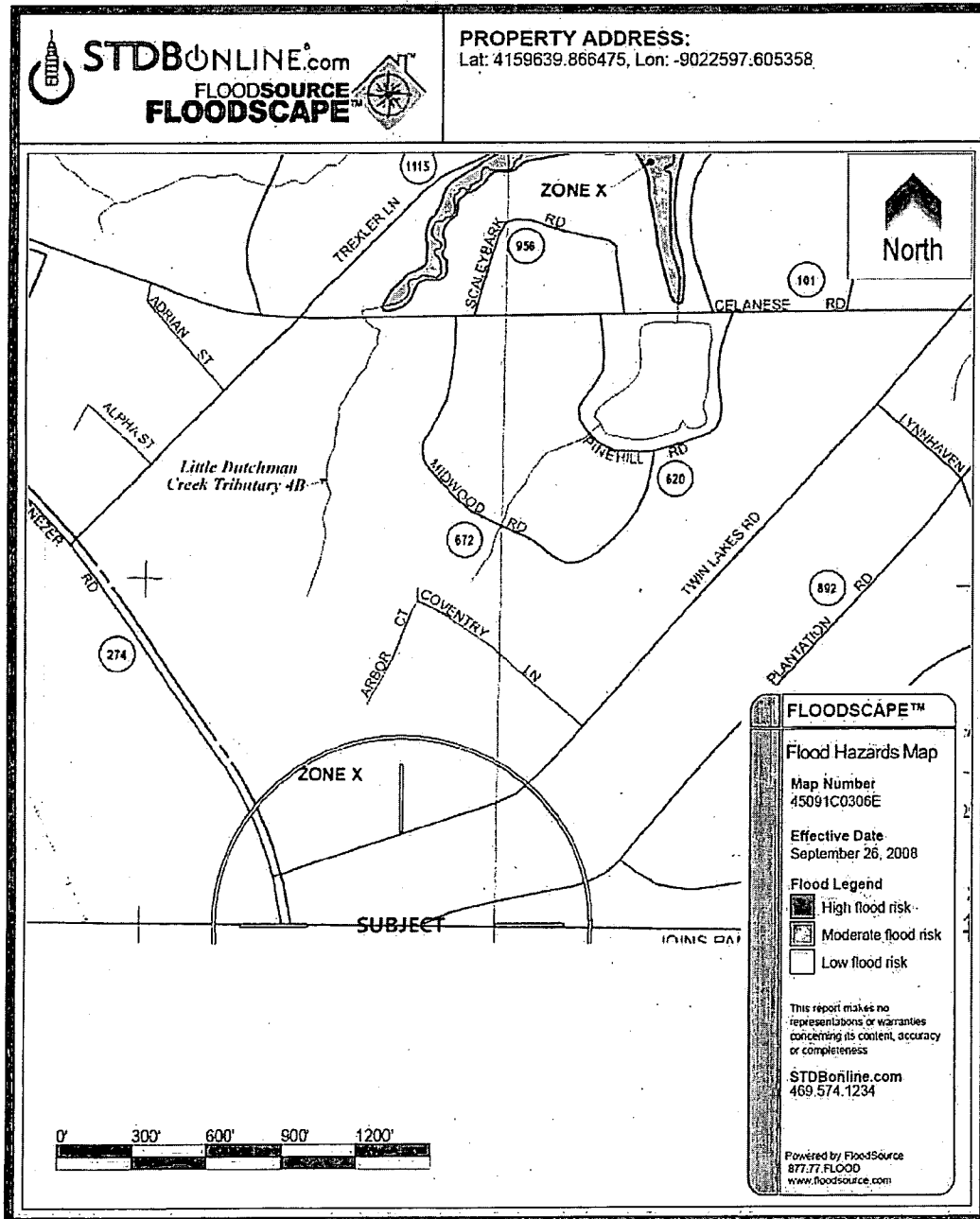
SHEET NO. 1 OF 1

FLOOD MAP NO. 1



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FLOOD MAP NO. 2



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Subject Photographs



1. Aerial view of subject (Photo dated)

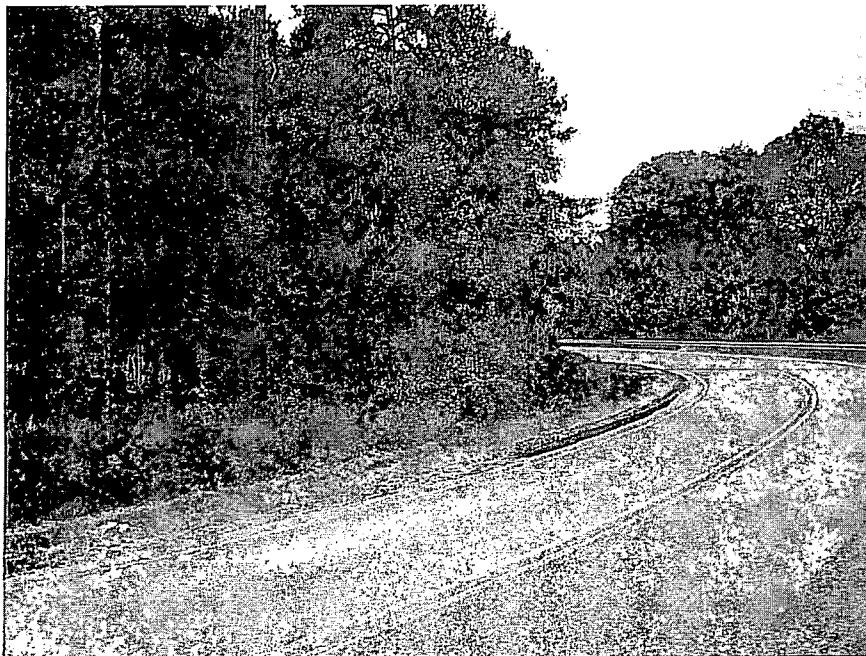


2. View of Parcel 063 along Twin Lakes Road (Taken 6/25/2014)

Subject Photographs



3. View of Parcel 063 along Twin Lakes Road (Taken 6/25/2014)



4. View of Parcel 064 along Twin Lakes Road (Taken 6/25/2014)

Subject Photographs



5. View of Parcel 064 along Twin Lakes Road (Taken 6/25/2014)



6. View of Parcel 064 along Twin Lakes Road (Taken 6/25/2014)

Subject Photographs



7. View of Parcel 064 along Ebenezer Road (Taken 6/25/2014)



8. View of Parcel 064 along Della's Way (Taken 6/25/2014)



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Qualifications

14-177-- THOMASSONAPTS-064
RESTRICTED APPRAISAL REPORT



Valbridge
PROPERTY ADVISORS

14-177 – THOMASSONAPTS-064
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Qualifications of H. Corbin Haskell, MAI

Valbridge Property Advisors | Robinson Company

Independent Valuations for a Variable World

State Certifications

State of South Carolina
CG-296

State of North Carolina
A5458

State of Georgia
217431

Education

B.S. Degree, Business Admin.
The Citadel

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Membership/Affiliations:

Member: Appraisal Institute - MAI Designation
Greenville Real Estate Board

Appraisal Institute & Related Courses:

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Basic Valuation Procedures
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Discounting Valuation Techniques for Subdivisions
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Valuation of Lease Interests, Part I
Comprehensive Review
Standards of Professional Practice - Part C
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National USPAP Update – Course 400
Numerous seminars sponsored by the Appraisal Institute
Valuation of Conservation Easements
Advanced Spreadsheet Modeling for Valuation Applications
SC Real Estate Broker A and B Courses
Marketability Studies: Advanced Considerations and Applications
Experience.

Experience:

Appraiser/Consultant

ValbridgePropertyAdvisors|Robinson Company(1981-Present)

Appraisal/valuation and consulting assignments, appraisal review,
right-of-way, conservation easements, litigation/expert testimony

Information on Valbridge Property Advisors

Valbridge covers the U.S. from coast to coast, and is one of the Top 3 national commercial real estate valuation and advisory services firms based on:

- Total number of MAIs (163 on staff)
- Total number of office locations (60 across the U.S.)
- Total number of staff (600+ strong)

Valbridge is owned by our local office leaders. Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.

Valbridge services all property types, including:

- Office
- Industrial
- Retail
- Apartments/multifamily/senior living
- Lodging/hospitality/recreational
- Land
- Special-purpose properties

Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements. Specialty services include:

- Portfolio valuation
- REO/foreclosure evaluation
- Real estate market and feasibility analysis
- Property and lease comparables, including lease review
- Due diligence
- Property tax assessment and appeal-support services
- Valuations and analysis of property under eminent domain proceedings
- Valuations of property for financial reporting, including goodwill impairment, impairment or disposal of long-lived assets, fair value and leasehold valuations
- Valuation of property for insurance, estate planning and trusteeship, including fractional interest valuation for gifting and IRS purposes
- Cost segregation studies
- Litigation support, including expert witness testimony
- Business and partnership valuation and advisory services, including partial interests

Independent Valuation for a Variable World



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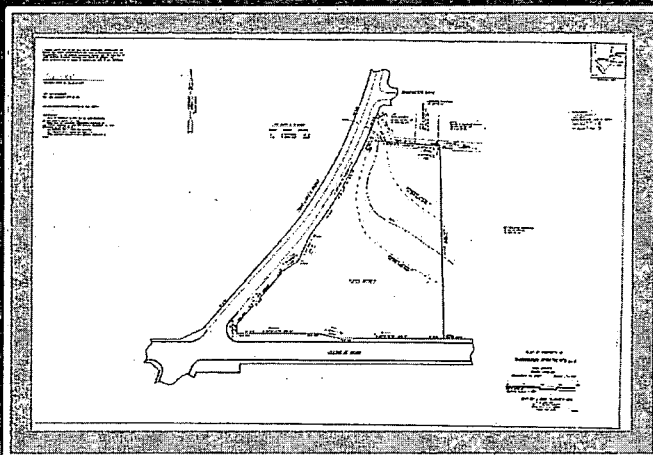
REF204683



Valbridge
PROPERTY ADVISORS

Appraisal Report

7.255 Acres of Vacant Land
Celanese Road at Twin Lakes Road
Rock Hill, York County, South Carolina
Report Date: July 21, 2014



PREPARED FOR:

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

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SC-14-0177-000



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July 21, 2014

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

RE: 7.255 Acres of Vacant Land
Celanese Road at Twin Lakes Road
Rock Hill, York County, South Carolina

Dear Mr. Outten:

In accordance with your request, I have prepared a market value opinion for the above-referenced property, presented in this appraisal report. The appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to my market value opinion.

The subject property appraised consists of a vacant tract containing 7.255 acres located at the northeast corner of Celanese Road and Twin Lakes Road, outside the Rock Hill city limits, in York County, South Carolina. The subject is further identified by the York County Tax Assessor as County Tax Parcel No. 592-02-01-110.

I developed my analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); the Interagency Appraisal and Evaluation Guidelines; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

Mr. Sam Outten is the client in this assignment and is the sole intended user of the appraisal report. The intended use is to estimate the Retrospective Market Value of the subject property as of *December 1, 2007*. The market value opinion reported herein is subject to the definitions, assumptions and limiting conditions, and certification contained in this report.



Valbridge
PROPERTY ADVISORS

14-177 – THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

Property Identification:
Address: 7.255 Acres of Vacant Land
Celanese Road at Twin Lakes Road
Rock Hill, York County, South Carolina

Assessor's Parcel Number: 592-02-01-110

Client/Intended User: Mr. Sam Outten and/or assigns

Purpose of the Appraisal: Establish a Retrospective Market Value opinion for the property as of December 1, 2007.

Effective Date of Value Opinion: December 1, 2007

Date of Inspection: June 25, 2014

Date of Report Preparation: July 21, 2014

Property Rights Appraised: Fee Simple Interest

Extraordinary Assumptions: In this appraisal, there are no extraordinary assumptions.

Hypothetical Conditions: In this appraisal, there are no hypothetical conditions.

Use of Real Estate
As of the Date of Value: Vacant/Idle
As of the Date of this Report: Vacant/Idle

Highest and Best Use
As Vacant: Transitional/Assemblage
As Improved: N/A

Zoning: RD-I; Residential Development District

Flood Map: 45091C0306E, September 26, 2008
(part in flood zone)

Sales History: As of the retrospective date of valuation (December 1, 2007), there had been no recent sales within the previous three years. The subject represents vacant undeveloped raw land.



Scope of Work

Report Development Procedures:

The subject property was inspected on June 25, 2014. Information from public records available was researched along with interviews with local real estate agents, appraisers, and public officials. Comparable land sales were analyzed in order to provide a market value opinion for the subject property as of the retrospective date of valuation (December 1, 2007).

Report Option:

This appraisal is presented in a Restricted Use Appraisal Report format at the client's request and is prepared in accordance with Standards Rule 2(b) of the Uniform Standards of Professional Appraisal Practice. As such, it does not present detailed discussions of the data, reasoning, and analyses that were used in the process to develop the appraiser's opinion of market value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file. The appraiser's opinions and conclusions set forth in this report cannot be understood properly without additional information in the appraiser's work file.

The reader is advised to clearly understand the assumptions and limiting conditions associated with a retrospective market value opinion. As the date of valuation is extended, the reliability of the data and analysis can be weakened.

Subject Site Description

Site Area:

7.255 acres

Parcel Location:

The subject is located at the northeast corner of Celanese Road and Twin Lakes Road, outside the Rock Hill city limits in York County, South Carolina.

Shape and Topography:

The subject is irregular in shape and has poor topographic features. The property is bisected by a creek with a portion of the tract located within a designated flood zone. The tract is steeply sloping downward from north to south. The topographic features of the tract limit its utility and hence, its value. The estimated portion of the tract located outside the flood zone and low-lying area is approximately 4.25 acres.



Valbridge
PROPERTY ADVISORS

14-177 – THOMASSON APTS-110
RESTRICTED APPRAISAL REPORT

Utilities:

Public water and sewer are available to the subject tract, according to public officials.

Site Improvements:

None

Comments on Site:

The tract is well located at a signalized interchange. However, the tract has poor topographic features including low-lying flood zone land and a severely sloping topography. The topographic features of the subject limit the utility of the tract.

Summary of the Valuation Techniques Used

Sales Comparison Approach

Introduction

In the Sales Comparison Approach, the method of estimating market value was to compare the subject property with comparable properties that have recently sold. The premise of the Sales Comparison Approach is that the market will determine a price for the subject property in the same manner that it determines prices of comparable competitive properties. This approach in the appraisal analysis is based upon the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an existing or substitute property with the same utility. It is a process of analyzing sales of similar properties, which have recently sold to arrive at an indication of the most probable sales price for the subject property. The Sales Comparison Approach is used in an effort to compare how buyers and sellers are behaving within the subject market area.

Comparable Sales

Extensive research was completed in the Rock Hill area in order to find comparable sales of similar properties prior to the retrospective date of valuation as of December 1, 2007. Shown on the following pages are detailed descriptions of the sales used in this approach. The sales used are considered to be the most comparable of all sales researched and adequate comparability exists for analysis purposes.



Valbridge
PROPERTY ADVISORS

14-177 - THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

LAND COMPARABLE 1

Property Identification

Property ID 21803
Address West side of India Hook Road at
Hillcroft Place
Rock Hill, York County,
South Carolina
Tax ID/APN 594-00-00-004 & 022

Sales Data

Sale Price \$975,000
Sale Date 4/7/2006
Grantor Ralph May & Martha Lewis
Grantee The Village at India Hook, LLC
Sale Status Closed
Book/Page 7928/277 & 282
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.61/SF
Price/Acre \$69,993/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 13.93 Acres/606,791 SF
Zoning PUD
Usable Land 100 % 13.93 Acres/606,791 SF
Flood Hazard None
Shape Irregular
Topography Gently rolling
Utilities All
Access Average
Primary Frontage India Hook Rd.
Easements None noted

Comments

This tract was annexed into the city limits of Rock Hill as a PUD prior to closing. Tract since developed with an age-restricted townhouse development. There was an old pond site on the tract.



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14-177 – THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

LAND COMPARABLE 2

Property Identification

Property ID 21804
North side of S. Herlong Avenue
Address Rock Hill, York County,
South Carolina
Tax ID/APN 593-08-01-002

Sales Data

Sale Price \$1,474,999
Sale Date 5/19/2005
Grantor Thomas G. Fleischer & William L.
Lehman, Jr.
Grantee Nathan & Julia Sanders and S. T.
Holdings, LLC
Sale Status Closed
Book/Page 7101/84
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.72/SF
Price/Acre \$75,064/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 19.65 Acres/855,954 SF
Zoning OI
Usable Land 100 % 19.65 Acres/855,954 SF
Flood Hazard None
Shape Irregular
Topography Rolling, stream bisects tract
Utilities All
Access Average
Primary Frontage S. Herlong Ave.
Easements None noted

Comments

This tract was purchased for an apartment development (300 units). A stream bisects the tract. No flood plain issues but topography required site work prior to development.



Valbridge
PROPERTY ADVISORS

14-177 - THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

LAND COMPARABLE 3

Property Identification

Property ID 21805
Ebenezer Road at Hollis Lakes
Road
Address Rock Hill, York County,
South Carolina
Tax ID/APN 589-01-01-056

Sales Data

Sale Price \$434,500
Sale Date 8/1/1997
Grantor Kathryn D. Stafford, et al.
Grantee US Postal Service Law
Department
Sale Status Closed
Book/Page 1931/175
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$1.66/SF
Price/Acre \$72,417/Acre

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Property Description

Land Acres or SF 6.00 Acres/261,360 SF
Zoning IG N/A
Usable Land 100 % 6.00 Acres/261,360 SF
Flood Hazard None
Shape Regular
Topography Generally level
Utilities All
Access Good
Primary Frontage Ebenezer Rd.
Secondary Frontage Hollis Lakes Rd.
Easements None noted

Comments

This is a corner lot at a signalized intersection. Property since developed with a post office.



Valbridge
PROPERTY ADVISORS

14-177 - THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

LAND COMPARABLE 4

Property Identification

Property ID 21806
West side of Ebenezer Road
Address Rock Hill, York County,
South Carolina
Tax ID/APN 593-02-03-003

Sales Data

Sale Price \$333,608
Sale Date 7/7/1998
Grantor Kathryn D. Stafford, et al.
Grantee Buddy Two, LLC
Sale Status Closed
Book/Page 2310/219
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$2.02/SF
Price/Acre \$87,792/Acre

Property Description

Land Acres or SF 3.80 Acres/165,528 SF
Zoning OI
Usable Land 100 % 3.80 Acres/165,528 SF
Flood Hazard None
Shape Slightly irregular
Topography Generally level
Utilities All
Access Average
Primary Frontage Ebenezer Rd.
Easements None noted

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-08-2014

Comments

This tract is located on the west side of Ebenezer Road, just south of Hollis Lakes Road. Tract since developed with a funeral home.

Land Sales Location Map



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www.delorme.com

MN (7.3° W)

0 800 1600 2400 3200 4000 ft
Data Zoom 13-0



Explanation of Adjustments:

The process of forming an opinion of the market value of the land is an appraisal technique in which the present opinion of the appraised land's value is predicated upon prices paid in actual real estate transactions. Adjustments were made to compensate for the differences between the subject site and each comparable site. It is a process of correlation and analysis of data about similar properties that have recently sold.

The subject property has limited market appeal based on the poor topographic features and utility of the site. Therefore, there are few truly comparable properties which have sold in the marketplace. Therefore, I have used the best comparables available and made adjustments for the poor topography of the tract.

The utility value between the comparable sales analyzed and the subject are sufficiently similar and good comparability exists for analysis purposes. The foregoing sales represent the most recent activity for this type of property and are the result of a comprehensive survey of similar utilized properties in the subject area. Each comparable sale was analyzed in relation to the subject property with regards to differences in location, land area, street frontage, access, exposure, development utility, zoning, easements, available public utilities, site conditions, and other physical characteristics, which influence value.

A market conditions adjustment based on an annual appreciation rate of 2% has been included with each of the four sales having been adjusted accordingly. Sale 2 required a plus adjustment for size as this tract is substantially larger than that of the subject while Sale 4 required a minus adjustment as this tract is substantially smaller than that of the subject. Each of the four sales received substantial minus adjustments for inferior topography.

LAND SALES ADJUSTMENT CHART					
Comparable No.	Subject	1	2	3	4
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Market	Market	Market	Market	Market
Condition of Sale	Arms Length	Arms Length	Arms Length	Arms Length	Arms Length
Date Of Sale	-	4/7/2006	5/19/2005	8/1/1997	7/7/1998
Sales Price	-	\$975,000	\$1,474,999	\$434,500	\$333,608
Location	Celanese Rd. @ Twin Lakes Rd.	India Hook Road	Ebenezer Rd. @ S. Herlong Ave.	Hollis Lakes Rd.	Ebenezer Road
Physical Characteristics:					
Size, Acres	7.255	13.93	19.65	6.00	3.80
S.F.	316,028	606,791	855,954	261,360	165,528
Shape	Irregular	Irregular	Irregular	Regular	Slight Irreg.
Topography	Steeply sloping	Gently rolling	Gently rolling	Gen. level	Gen. Level
Access/Frontage/Exposure	Average	Average	Average	Good	Average
Other	-	-	-	-	-
Sales Price/Acre		\$69,993	\$75,064	\$72,417	\$87,792
ADJUSTMENTS					
Property Rights		-	-	-	-
Financing		-	-	-	-
Conditions of Sale		-	-	-	-
Market Conditions		3.30%	5.07%	20.68%	18.82%
Adjusted Price/Acre		\$72,305	\$78,872	\$87,392	\$104,311
Location		-	-	-	-
Physical Characteristics:					
Size		-	5%	-	-5%
Shape		-	-	-	-
Topography		-60%	-60%	-60%	-60%
Utilities		-	-	-	-
Zoning		-	-	-	-
Access/Frontage/Exposure		-	-	-	-
Other		-	-	-	-
Total Adjustments		-60%	-55%	-60%	-65%
Final Adjusted Price / Acre		\$28,922	\$35,493	\$34,957	\$36,509
ANALYSIS					
Low	\$28,922				
High	\$36,509				
Mean	\$33,970				
Median	\$35,225				



Summary of Value Conclusions

Prior to adjustments, the four sales used indicate a range of values between \$69,993 per acre and \$87,792 per acre. Adjustments deemed necessary were for market conditions, size and topography. After all necessary adjustments, the four sales indicate a closer range from \$28,922 per acre to \$36,509 per acre with a mean of \$33,970 per acre and a median of \$35,225 per acre.

Therefore, based on the preceding sales and analysis, it is our opinion that the market value of the subject property is \$35,000 per acre. The price per acre is applied to the land area which is outside of the flood plain or low-lying areas of approximately 4.25 acres, calculated as follows:

4.25 acres usable X \$35,000/acre =	\$148,750
Rounded to:	\$149,000

The above value is a retrospective opinion of market value as of December 1, 2007 based on the best information available and comprehensive analysis. This letter of transmittal is not considered valid if separated from this report and must be accompanied by all sections of this report in order for the value opinions set forth above to be valid.

Respectfully submitted,
Valbridge Property Advisors | Robinson Company

A handwritten signature in cursive script that reads 'CHaskell'.

Corbin Haskell, MAI
South Carolina License CG296

General Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Robinson Company will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Robinson Company is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.



11. The information, estimates and opinions which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise which would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Robinson Company and Client.
15. Distribution of this report is at the sole discretion of the client, but no third-party not listed as an intended user on the face of the appraisal or the engagement letter may rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Robinson Company.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. If the appraisal is for mortgage loan purposes: 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income & Expense Projection" are anticipated.
20. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

21. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.
22. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
23. The reader is cautioned the SC Supreme Court in a July 2011 opinion #27013, implied that any party researching the zoning classification of a property should personally inspect the public records via an official zoning map. We have, in fact, researched official zoning maps during the course of other appraisals throughout the state, and have found them to contain errors in certain instances. Therefore, researching "official" zoning maps may not be accurate without additional research by zoning officials or your attorney. The intended user of this report is therefore urged to obtain verification of zoning. Please consult your attorney to ascertain legal and zoning issues as we are not qualified to provide opinions regarding zoning or other legal matters.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a

survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.

27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to

the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Robinson Company all agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Robinson Company and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury.
36. Valbridge Property Advisors | Robinson Company shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Robinson Company. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Robinson Company and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment.
37. The value opinion(s) provided herein is subject to any and all predication(s) set forth in this report.
38. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Robinson Company. Neither Valbridge Property Advisors, Inc. (the parent company), nor any of its affiliates (VPAFS, LLC), has been engaged to provide this report. Valbridge Property Advisors, Inc. (the parent company) does not provide valuation services and has taken no part in the preparation of this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.



Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the appraisal within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Corbin Haskell, MAI made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person/people signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



13. As of the date of this report, I, Corbin Haskell, MAI have completed the voluntary continuing education program for Designated Members of the Appraisal Institute.

CHaskell

Corbin Haskell, MAI
South Carolina License CG296
chaskell@valbridge.com

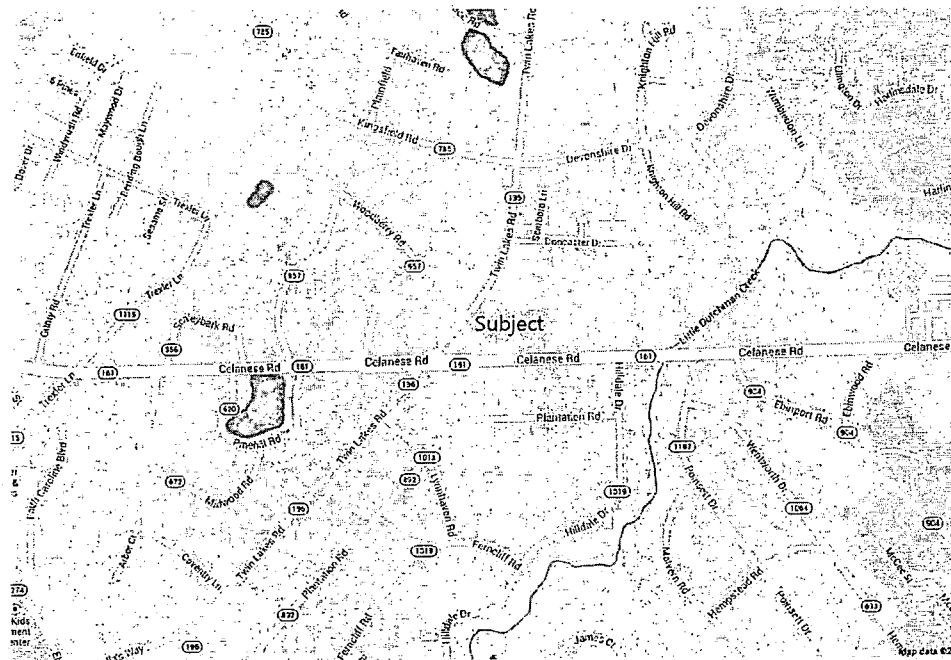


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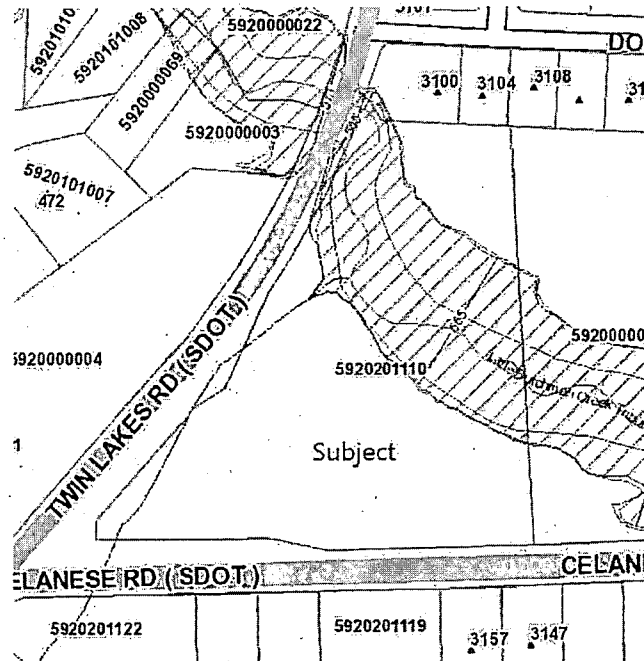
14-177 – THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

Addenda

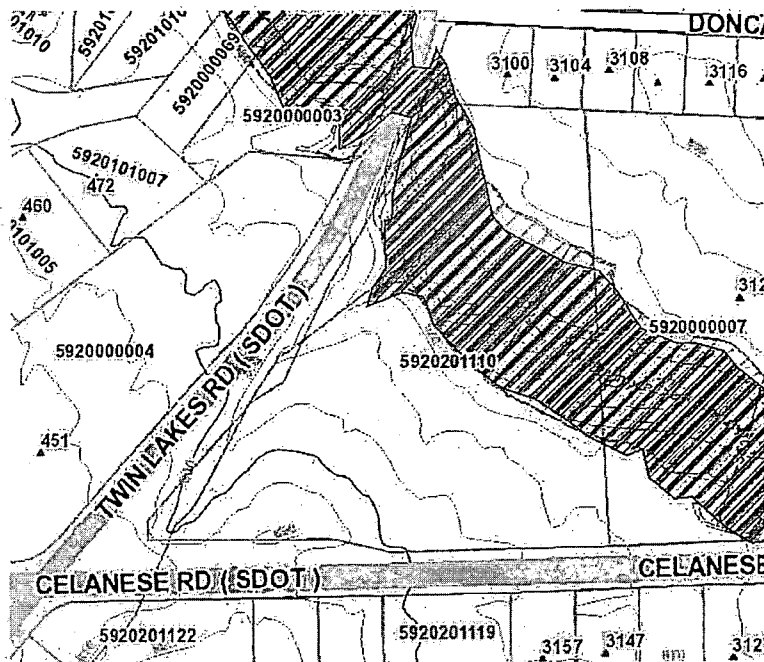
LOCATION MAPS



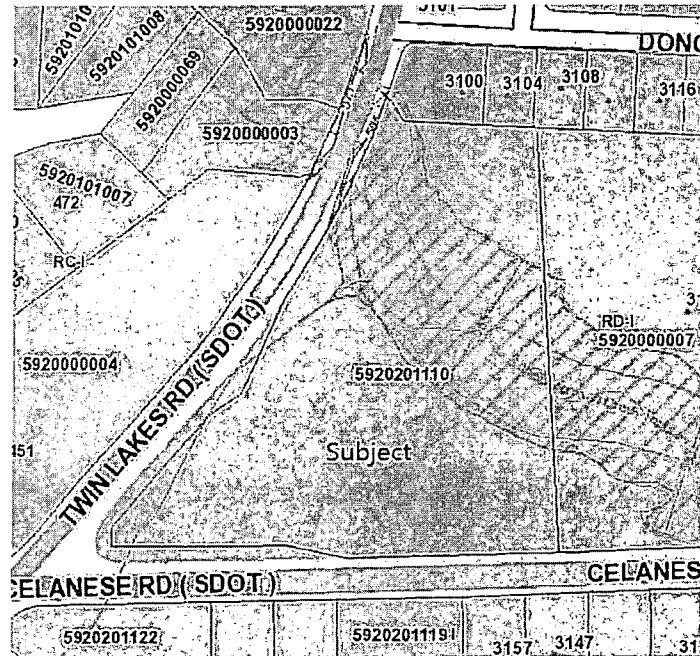
TAX MAP



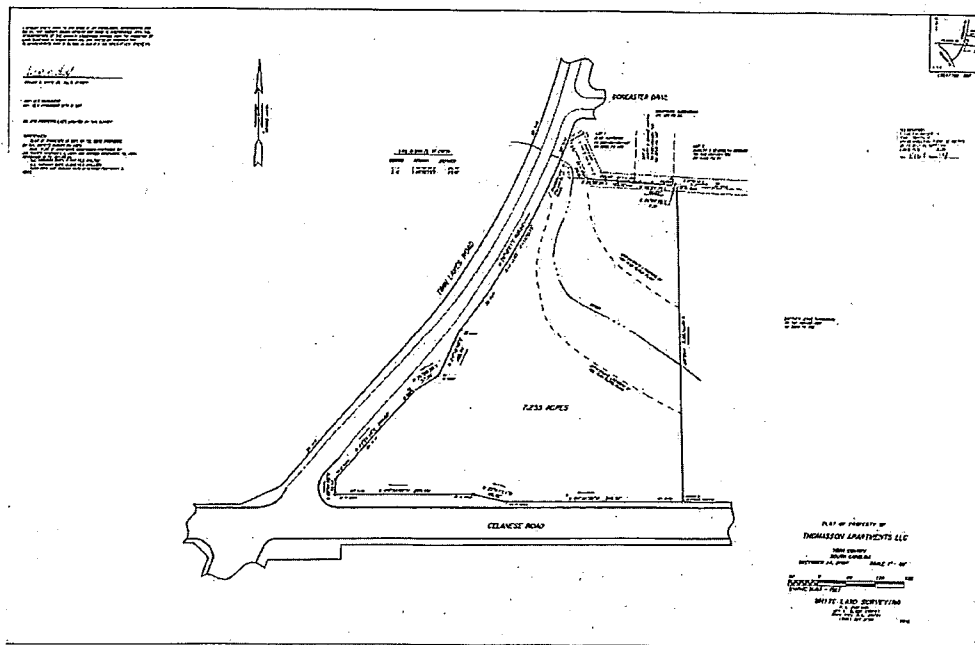
TOPOGRAPHIC TAX MAP



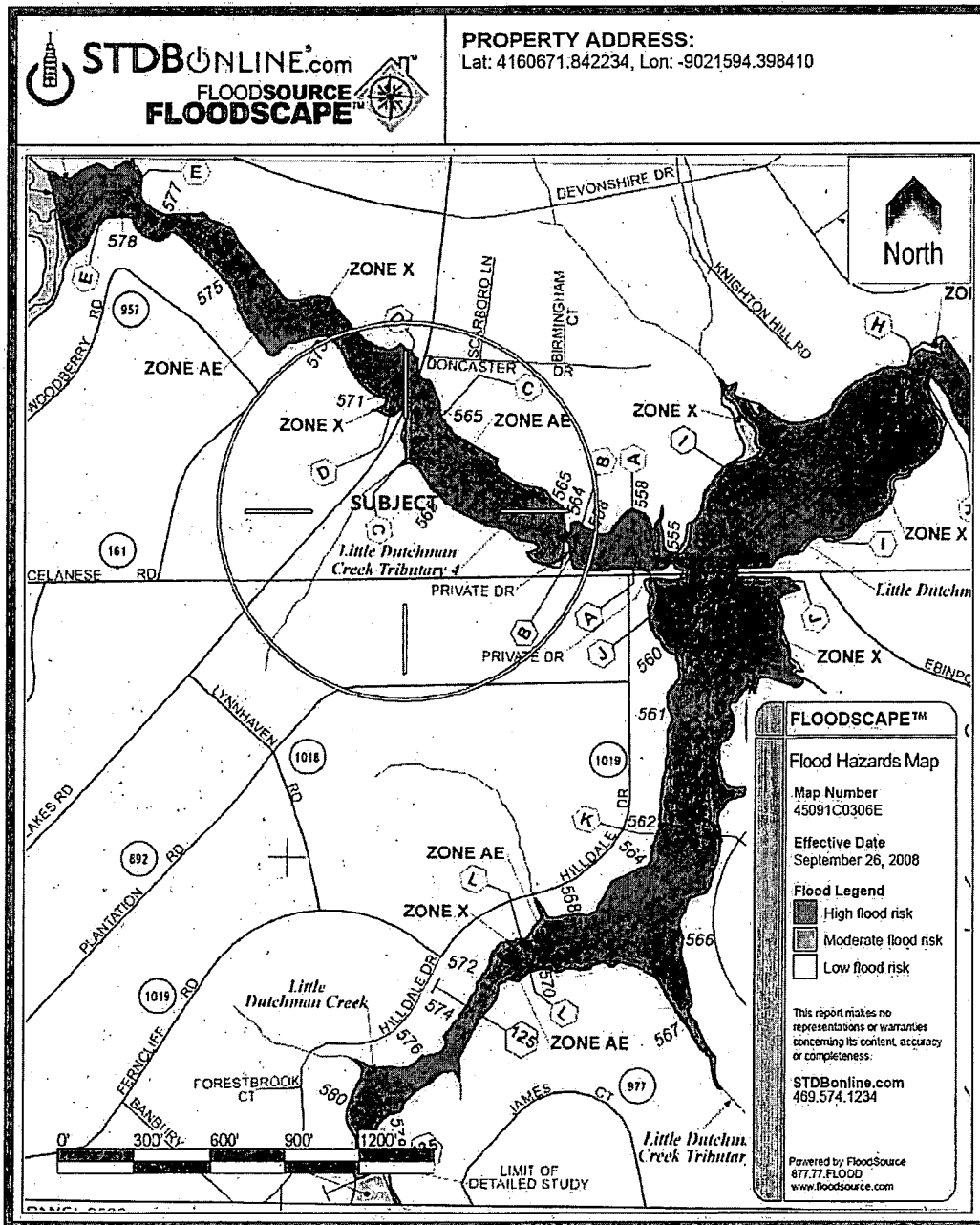
ZONING MAP



SURVEY

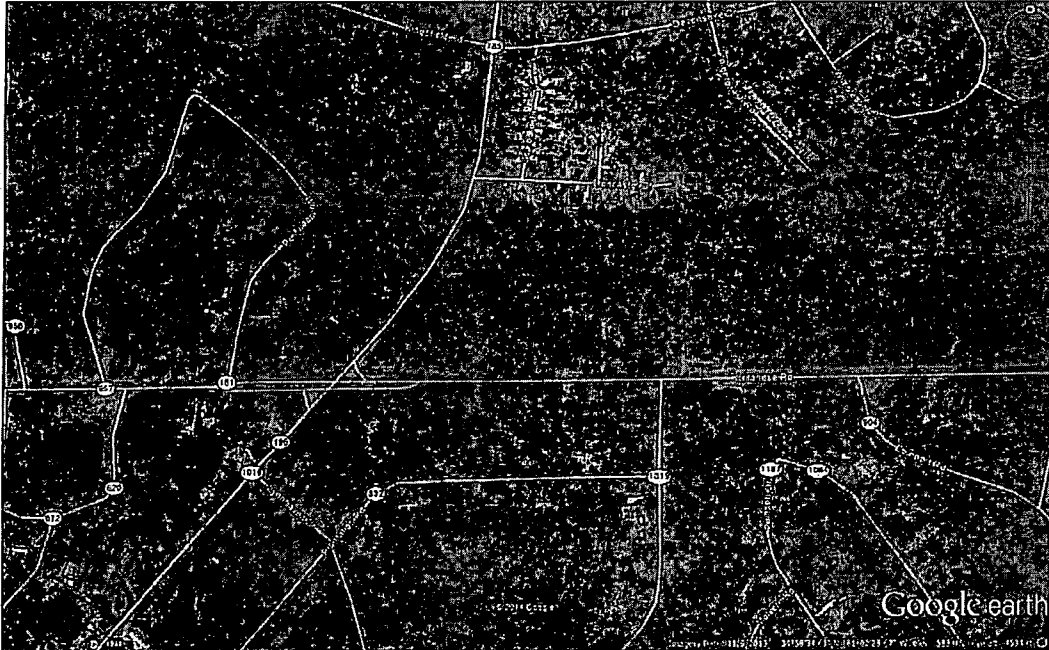


FLOOD MAP



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Subject Photographs

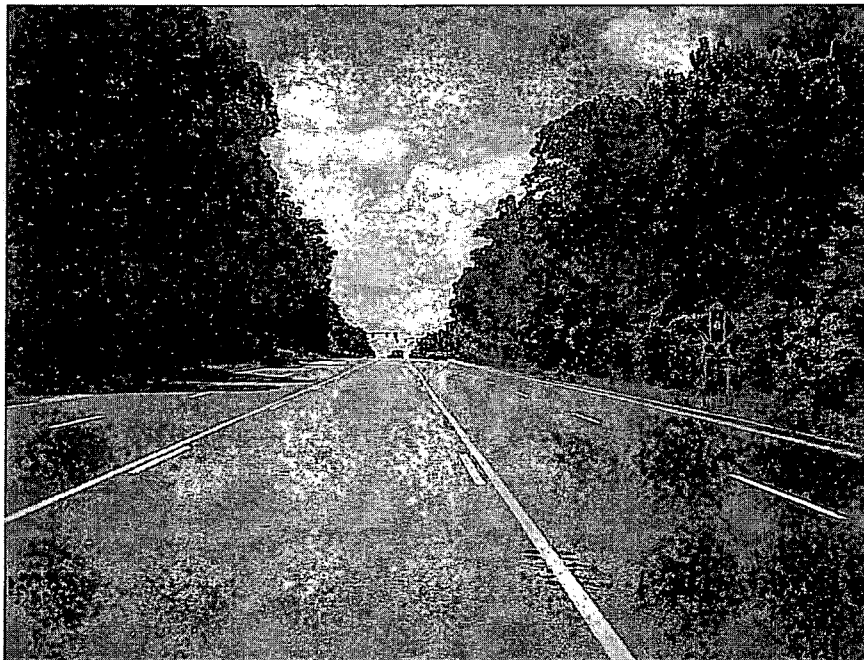


1. Aerial view of subject (Photo dated)



2. View looking west along Celanese Road – subject on right (Taken 6/25/2014)

Subject Photographs



3. View looking west along Celanese Road – subject on right (Taken 6/25/2014)



4. View looking south on Twin Lakes Road – subject on left (Taken 6/25/2014)

Subject Photographs



5. View looking south on Twin Lakes Road – subject on left (Taken 6/25/2014)



6. View looking north on Twin Lakes Road – subject on right (Taken 6/25/2014)



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Qualifications

14-177 – THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT



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14-177 - THOMASSONAPTS-110
RESTRICTED APPRAISAL REPORT

Qualifications of H. Corbin Haskell, MAI
Valbridge Property Advisors | Robinson Company

Independent Valuations for a Variable World

State Certifications

State of South Carolina
CG-296

State of North Carolina
A5458

State of Georgia
217431

Education

B.S. Degree, Business Admin.
The Citadel

South Carolina Association of
REALTORS®
REALTORS® Institute

Contact Details

864-233-6277 (p)
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chaskell@valbridge.com

Membership/Affiliations:

Member: Appraisal Institute - MAI Designation
Greenville Real Estate Board

Appraisal Institute & Related Courses:

Real Estate Appraisal Principles
Basic Valuation Procedures
Standards of Professional Practice
Capitalization Theory and Techniques, Part A & B
Case Studies in Real Estate Valuation
Valuation Analysis and Report Writing
Discounting Valuation Techniques for Subdivisions
Capitalization Overview
Valuation of Lease Interests, Part I
Comprehensive Review
Standards of Professional Practice - Part C
Income Valuation of small Mixed-Use Properties
National USPAP Update - Course 400
Numerous seminars sponsored by the Appraisal Institute
Valuation of Conservation Easements
Advanced Spreadsheet Modeling for Valuation Applications
SC Real Estate Broker A and B Courses
Marketability Studies: Advanced Considerations and Applications
Experience

Experience:

Appraiser/Consultant

ValbridgePropertyAdvisors|Robinson Company(1981-Present)

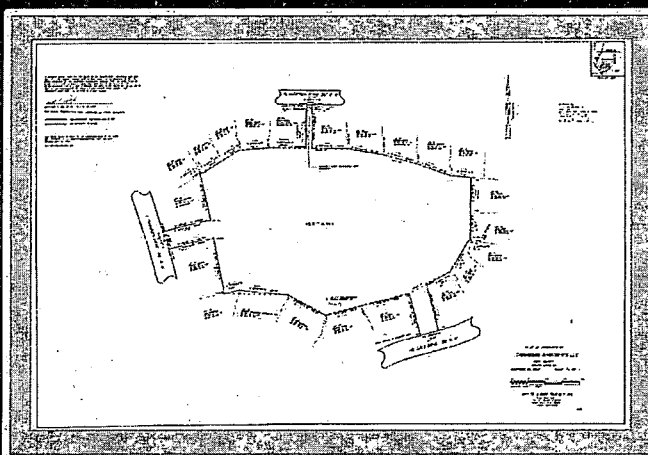
Appraisal/valuation and consulting assignments, appraisal review,
right-of-way, conservation easements, litigation/expert testimony



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PROPERTY ADVISORS

Appraisal Report

10.337 Acres of Vacant Land
Lynn Haven Road and Hilldale Drive
Rock Hill, York County, South Carolina
Report Date: July 21, 2014



PREPARED FOR:

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

Valbridge Property Advisors |
Robinson Company

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SC-14-0177-000

RBH 004714
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July 21, 2014

Mr. Sam Outten, Partner
Nelson, Mullins, Riley & Scarborough, LLP
Poinsett Plaza, Suite 900
Greenville, South Carolina 29601

RE: 10.337 Acres of Vacant Land
Lynn Haven Road at Hilldale Drive
Rock Hill, York County, South Carolina

Dear Mr. Outten:

In accordance with your request, I have prepared a market value opinion for the above-referenced property, presented in this appraisal report. The appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to my market value opinion.

The subject property appraised consists of a vacant tract containing 10.337 acres surrounded by an established subdivision off Lynn Haven Road and Hilldale Drive, outside the Rock Hill city limits, in York County, South Carolina. The subject is further identified by the York County Tax Assessor as County Tax Parcel No. 592-02-01-164.

I developed my analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); the Interagency Appraisal and Evaluation Guidelines; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

Mr. Sam Outten is the client in this assignment and is the sole intended user of the appraisal report. The intended use is to estimate the Retrospective Market Value of the subject property as of *December 1, 2007*. The market value opinion reported herein is subject to the definitions, assumptions and limiting conditions, and certification contained in this report.



Valbridge
PROPERTY ADVISORS

14-177 – THOMASSONAPTS-164
RESTRICTED APPRAISAL REPORT

Property Identification: 10.337 Acres of Vacant Land
Address: Lynn Haven Road and Hilddale Drive
Rock Hill, York County, South Carolina

Assessor's Parcel Number: 592-02-01-164

Client/Intended User: Mr. Sam Outten and/or assigns

Purpose of the Appraisal: Establish a Retrospective Market Value opinion for the property as of December 1, 2007.

Effective Date of Value Opinion: December 1, 2007

Date of Inspection: June 25, 2014

Date of Report Preparation: July 21, 2014

Property Rights Appraised: Fee Simple Interest

Extraordinary Assumptions: In this appraisal, there are no extraordinary assumptions.

Hypothetical Conditions: In this appraisal, there are no hypothetical conditions.

Use of Real Estate
As of the Date of Value: Vacant/Idle
As of the Date of this Report: Vacant/Idle

Highest and Best Use
As Vacant: Single family home site
As Improved: Single family home site

Zoning: RC-I; Residential Conservation District

Flood Map: 45091C0306E, September 26, 2008
(not in flood zone)

Sales History: As of the retrospective date of valuation (December 1, 2007), there had been no recent sales within the previous three years. The subject represents vacant undeveloped raw land.



Scope of Work

Report Development Procedures:

The subject property was inspected on June 25, 2014. Information from public records available was researched along with interviews with local real estate agents, appraisers, and public officials. Comparable land sales were analyzed in order to provide a market value opinion for the subject property as of the retrospective date of valuation (December 1, 2007).

Report Option:

This appraisal is presented in a Restricted Use Appraisal Report format at the client's request and is prepared in accordance with Standards Rule 2(b) of the Uniform Standards of Professional Appraisal Practice. As such, it does not present detailed discussions of the data, reasoning, and analyses that were used in the process to develop the appraiser's opinion of market value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file. The appraiser's opinions and conclusions set forth in this report cannot be understood properly without additional information in the appraiser's work file.

The reader is advised to clearly understand the assumptions and limiting conditions associated with a retrospective market value opinion. As the date of valuation is extended, the reliability of the data and analysis can be weakened.

Subject Site Description

Site Area:

10.337 acres

Parcel Location:

The subject property is surrounded by an established single family residential subdivision off Lynn Haven Road and Hilldale Drive, outside the Rock Hill city limits in York County, South Carolina.

Shape and Topography:

The subject is irregular in shape and has poor topographic features. The property has a creek bed and limited access. The majority of the tract has a gentle to steep sloping topography and is wooded.

Utilities:

Public water and sewer are available to the subject tract, according to public officials. However, extension of utilities for any type of development is outside the scope of this appraisal.



Site Improvements:

None

Comments on Site:

The tract represents the undevelopable portion of a tract which was developed as a subdivision many years ago. The tract has limited access and poor topographic features which limit the utility of the property.

Summary of the Valuation Techniques Used

Sales Comparison Approach

Introduction

In the Sales Comparison Approach, the method of estimating market value was to compare the subject property with comparable properties that have recently sold. The premise of the Sales Comparison Approach is that the market will determine a price for the subject property in the same manner that it determines prices of comparable competitive properties. This approach in the appraisal analysis is based upon the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an existing or substitute property with the same utility. It is a process of analyzing sales of similar properties, which have recently sold to arrive at an indication of the most probable sales price for the subject property. The Sales Comparison Approach is used in an effort to compare how buyers and sellers are behaving within the subject market area.

Comparable Sales

Extensive research was completed in the Rock Hill area in order to find comparable sales of similar properties prior to the retrospective date of valuation as of December 1, 2007. Shown on the following pages are detailed descriptions of the sales used in this approach. The sales used are considered to be the most comparable of all sales researched and adequate comparability exists for analysis purposes.



LAND COMPARABLE 1

Property Identification

Property ID 21834
S/S of Pennington Road
Address Rock Hill, York County,
South Carolina
Tax ID/APN 546-00-00-073

Sales Data

Sale Price \$190,000
Sale Date 8/22/2006
Grantor James D. & Linda Taylor
Grantee Charles B. Hood, Trustee
Sale Status Closed
Book/Page 8329/101
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$.37/SF
Price/Acre \$15,966/Acre

Property Description

Land Acres or SF 11.90 Acres/518,364 SF
Zoning RC-1
Usable Land 100 % 11.90 Acres/518,364 SF
Flood Hazard None - Zone X
Shape Irregular
Topography Sloping; creek bisects tract
Utilities All available
Access Fair
Primary Frontage Pennington Rd.
Easements None noted

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-15-2014

Comments

This tract has minimal frontage on Pennington Road. The tract has a sloping topography with a creek bisecting the property.



LAND COMPARABLE 2

Property Identification

Property ID 21835
Address S/S of Newcastle Drive
Rock Hill, York County,
South Carolina
Tax ID/APN 500.00-00-105

Sales Data

Sale Price \$145,495
Sale Date 11/7/2005
Grantor N/A
Grantee Jonathan W. & Susan B. Hibbard
Sale Status Closed
Book/Page 7552/31
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$.15/SF
Price/Acre \$6,592/Acre

Property Description

Land Acres or SF 22.07 Acres/961,369 SF
Zoning RUD-1
Usable Land 100 % 22.07 Acres/961,369 SF
Flood Hazard Part
Shape Irregular
Topography Sloping
Utilities All available
Access Fair
Primary Frontage Newcastle Dr.
Easements None noted

Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-15-2014

Comments

Rear of tract is in flood zone. The tract is located at the end of Newcastle Drive.



LAND COMPARABLE 3

Property Identification

Property ID 21836
Garden Ridge Road
Address Rock Hill, York County,
South Carolina
Tax ID/APN 494.02-01-007

Sales Data

Sale Price \$90,000
Sale Date 6/1/2007
Grantor LBBR Development, LLC
Grantee Marshall A. & Brenda B. Hill
Sale Status Closed
Book/Page 9137/273
Property Rights Fee Simple
Financing Cash to Seller
Conditions of Sale Arm's Length
Price/SF \$.16/SF
Price/Acre \$6,860/Acre

Property Description

Land Acres or SF 13.12 Acres/571,507 SF
Zoning AGC
Usable Land 100 % 13.12 Acres/571,507 SF
Flood Hazard None - Zone X
Shape Irregular
Topography Sloping
Utilities All available
Access Fair
Primary Frontage Garden Ridge Rd.
Easements None noted

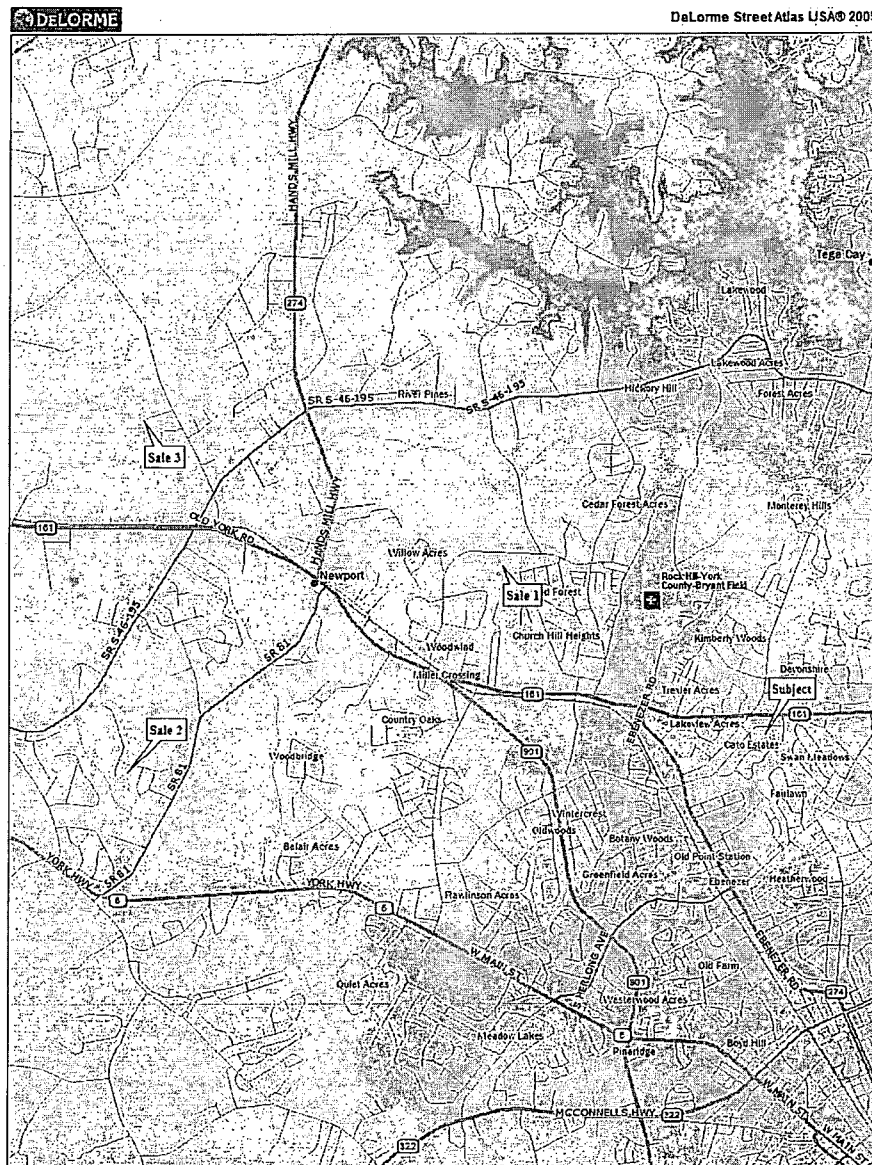
Verification

Confirmed With Deed/Inspection
Confirmed By Corbin Haskell
07-15-2014

Comments

This tract is located at the cul-de-sac of Garden Ridge Road. The tract is irregular in shape.

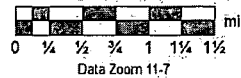
Land Sales Location Map



Data use subject to license.

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www.delorme.com



Explanation of Adjustments:

The process of forming an opinion of the market value of the land is an appraisal technique in which the present opinion of the appraised land's value is predicated upon prices paid in actual real estate transactions. Adjustments were made to compensate for the differences between the subject site and each comparable site. It is a process of correlation and analysis of data about similar properties that have recently sold.

The subject property has limited market appeal based on the poor topographic features, access, and utility of the site. Therefore, there are few truly comparable properties which have sold in the marketplace. Therefore, my research was focused on sales with a similar highest and best use, which were either used for or have a highest and best use as a single family home site.

The utility value between the comparable sales analyzed and the subject are sufficiently similar and good comparability exists for analysis purposes. The foregoing sales represent the most recent activity for this type of property and are the result of a comprehensive survey of similar, utilized properties in the subject area. Each comparable sale was analyzed in relation to the subject property with regards to differences in location, land area, street frontage, access, exposure, development utility, zoning, easements, available public utilities, site conditions, and other physical characteristics, which influence value.

A market conditions adjustment based on an annual appreciation rate of 2% has been included with each of the four sales having been adjusted accordingly. Sales 2 and 3 each required substantial plus adjustments for inferior location. Sale 1 required a slight minus adjustment for superior topography. All three sales required minus adjustments for superior access/frontage and exposure.

LAND SALES ADJUSTMENT CHART				
Comparable No.	Subject	1	2	3
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Market	Market	Market	Market
Condition of Sale	Arms Length	Arms Length	Arms Length	Arms Length
Date Of Sale	-	8/22/2006	11/7/2005	6/1/2007
Sales Price	-	\$190,000	\$145,495	\$90,000
Location	Hilldale Drive & Lynhaven Road	Pennington Road	Newcastle Drive	Garden Ridge Road
Physical Characteristics:				
Size; Acres	10.337	11.90	22.07	13.12
S.F.	450,280	518,364	961,369	571,507
Shape	Irregular	Irregular	Irregular	Irregular
Topography	Sloping	Gently sloping	Sloping	Sloping
Access/Frontage/Exposure	Poor	Fair	Fair	Fair
Other	-	-	-	-
Sales Price/Acre		\$15,966	\$6,592	\$6,860
ADJUSTMENTS				
Property Rights		-	-	-
Financing		-	-	-
Conditions of Sale		-	-	-
Market Conditions		2.55%	4.13%	1.00%
Adjusted Price/Acre		\$16,374	\$6,865	\$6,929
Location		-	25%	25%
Physical Characteristics:				
Size		-	-	-
Shape		-	-	-
Topography		-10%	-	-
Utilities		-	-	-
Zoning		-	-	-
Access/Frontage/Exposure		-20%	-10%	-10%
Other		-	-	-
Total Adjustments		-30%	15%	15%
Final Adjusted Price / Acre		\$11,462	\$7,895	\$7,968
ANALYSIS				
Low		\$7,895		
High		\$11,462		
Mean		\$9,108		
Median		\$7,968		



Summary of Value Conclusions

Prior to adjustments, the three sales used indicate a range of values between \$6,592 per acre and \$15,966 per acre. Adjustments deemed necessary were for market conditions, location, topography, and access/frontage and exposure. After all necessary adjustments, the sales indicate a closer range from \$7,895 per acre to \$11,462 per acre with a mean of \$9,108 per acre and a median of \$7,968 per acre.

Therefore, based on the preceding sales and analysis, it is our opinion that the market value of the subject property is \$9,000 per acre, which is calculated as follows:

10.337 acres X \$9,000/acre =	\$93,033
Rounded to:	\$93,000

The above value is a retrospective opinion of market value as of December 1, 2007 based on the best information available and comprehensive analysis. This letter of transmittal is not considered valid if separated from this report and must be accompanied by all sections of this report in order for the value opinions set forth above to be valid.

Respectfully submitted,
Valbridge Property Advisors | Robinson Company

CHaskell

Corbin Haskell, MAI
South Carolina License CG296

General Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Robinson Company will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Robinson Company is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.

11. The information, estimates and opinions which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise which would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Robinson Company and Client.
15. Distribution of this report is at the sole discretion of the client, but no third-party not listed as an intended user on the face of the appraisal or the engagement letter may rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Robinson Company.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. If the appraisal is for mortgage loan purposes: 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income & Expense Projection" are anticipated.
20. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.



21. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.
22. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
23. The reader is cautioned the SC Supreme Court in a July 2011 opinion #27013, implied that any party researching the zoning classification of a property should personally inspect the public records via an official zoning map. We have, in fact, researched official zoning maps during the course of other appraisals throughout the state, and have found them to contain errors in certain instances. Therefore, researching "official" zoning maps may not be accurate without additional research by zoning officials or your attorney. The intended user of this report is therefore urged to obtain verification of zoning. Please consult your attorney to ascertain legal and zoning issues as we are not qualified to provide opinions regarding zoning or other legal matters.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a

survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.

27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to

the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Instituted is such disclose is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Robinson Company all agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Robinson Company and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury.
36. Valbridge Property Advisors | Robinson Company shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Robinson Company. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Robinson Company and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment.
37. The value opinion(s) provided herein is subject to any and all predications set forth in this report.
38. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Robinson Company. Neither Valbridge Property Advisors, Inc. (the parent company), nor any of its affiliates (VPAFS, LLC), has been engaged to provide this report. Valbridge Property Advisors, Inc. (the parent company), does not provide valuation services and has taken no part in the preparation of this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.



Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the appraisal within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Corbin Haskell, MAI made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person/people signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



13. As of the date of this report, I, Corbin Haskell, MAI have completed the voluntary continuing education program for Designated Members of the Appraisal Institute.

CHaskell

Corbin Haskell, MAI
South Carolina License CG296
chaskell@valbridge.com

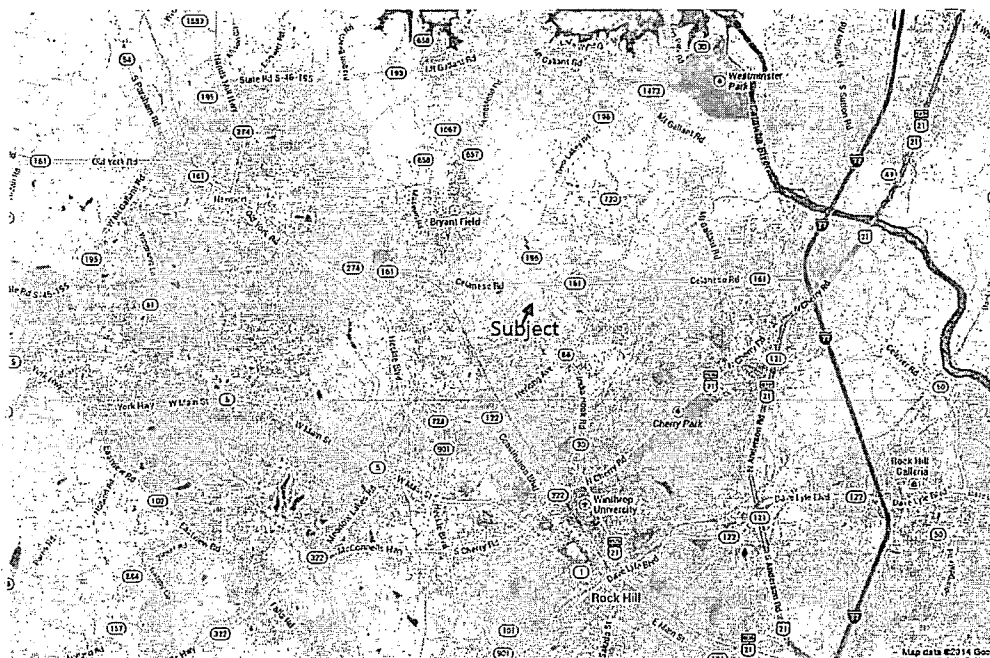
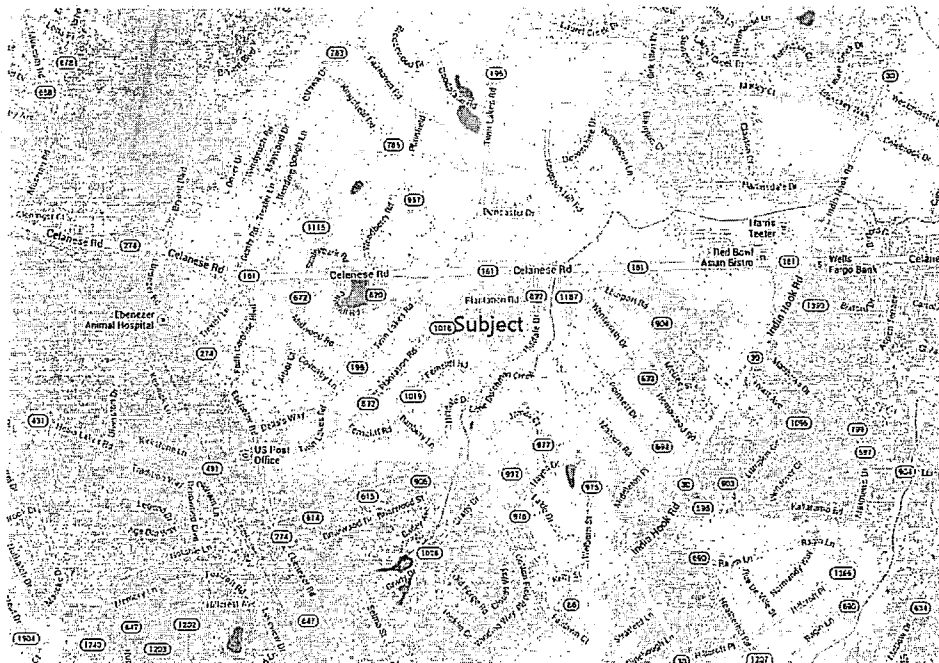


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14-177 - THOMASSONAPTS-164
RESTRICTED APPRAISAL REPORT

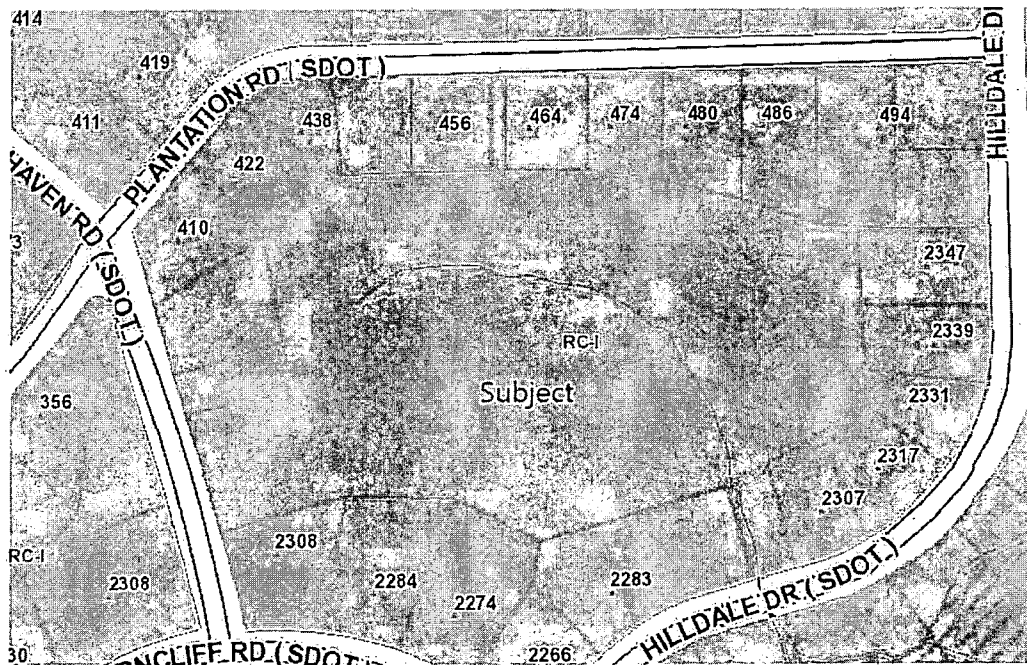
Addenda

LOCATION MAPS

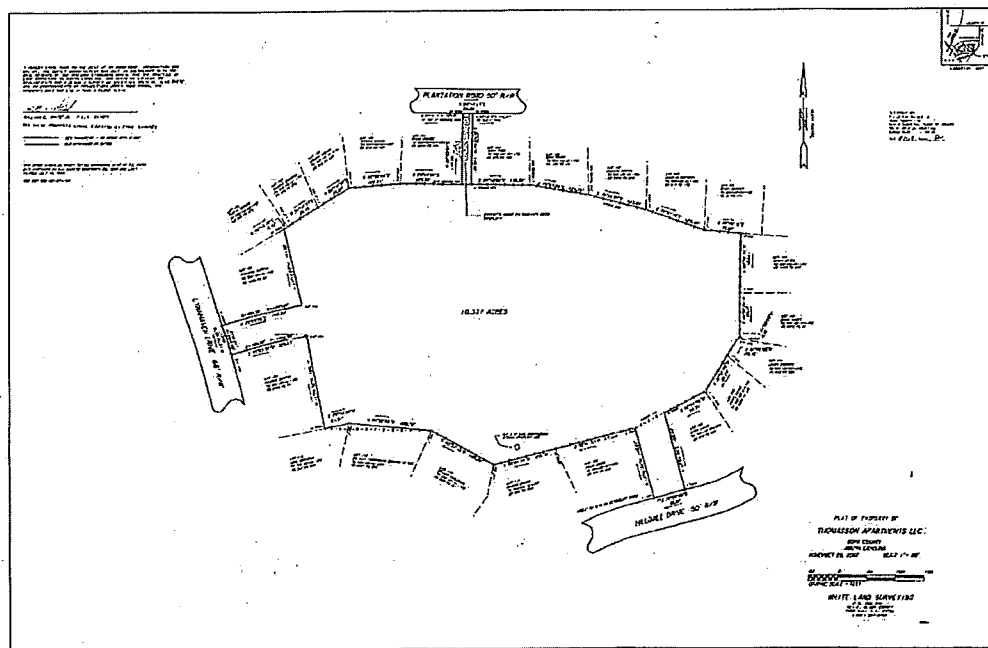




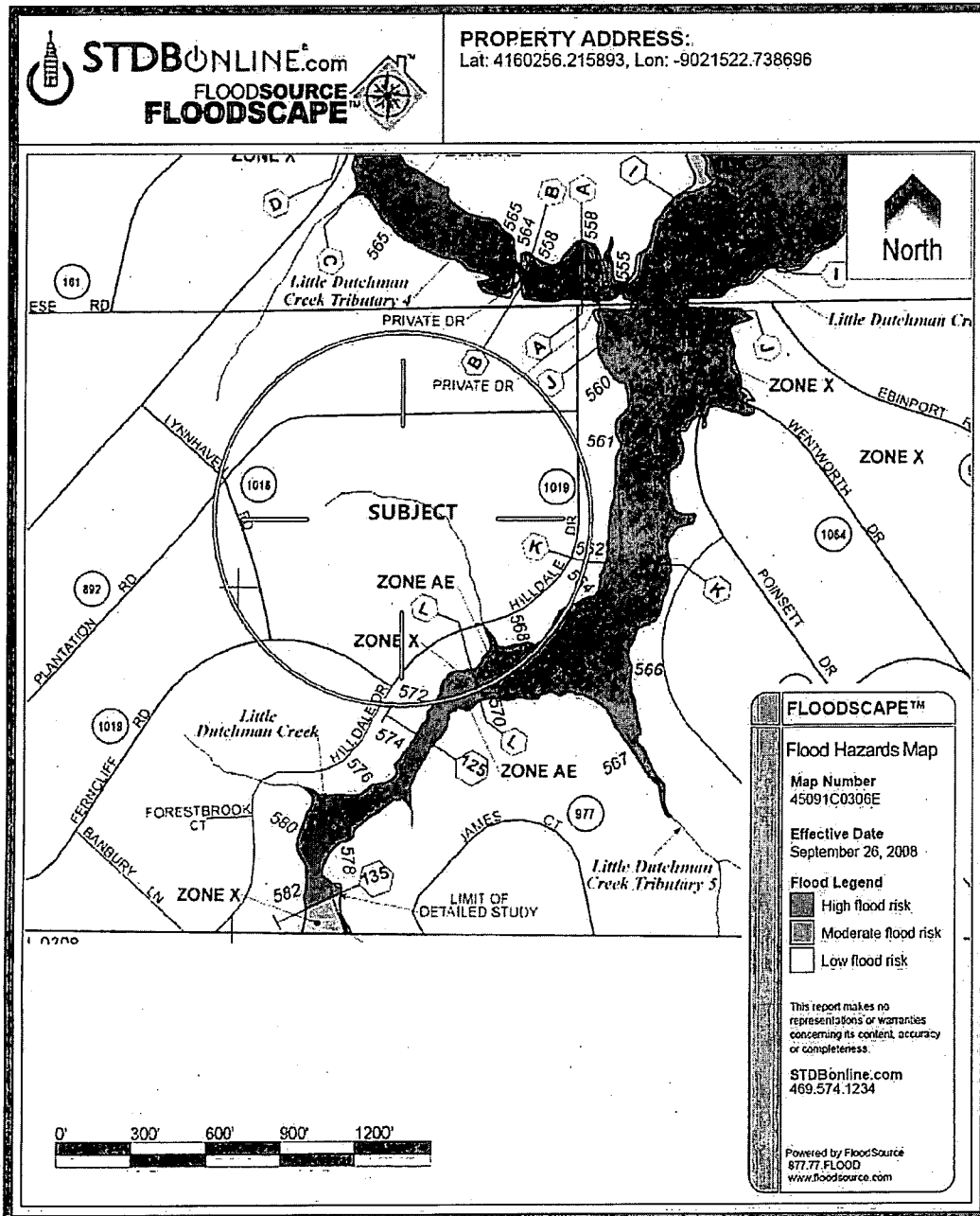
ZONING MAP



SURVEY

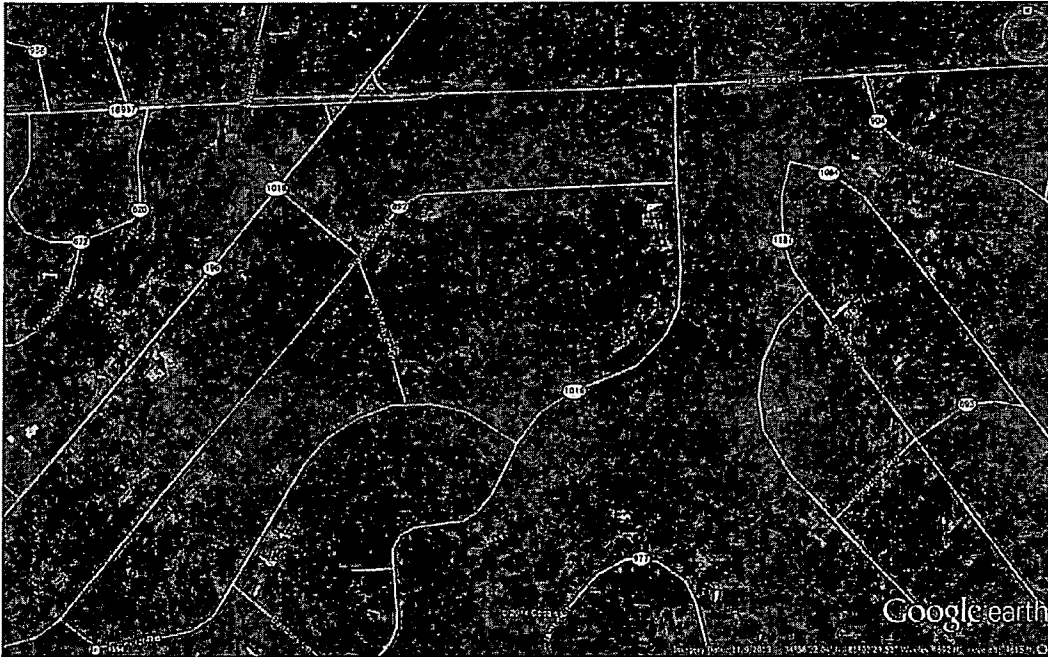


FLOOD MAP

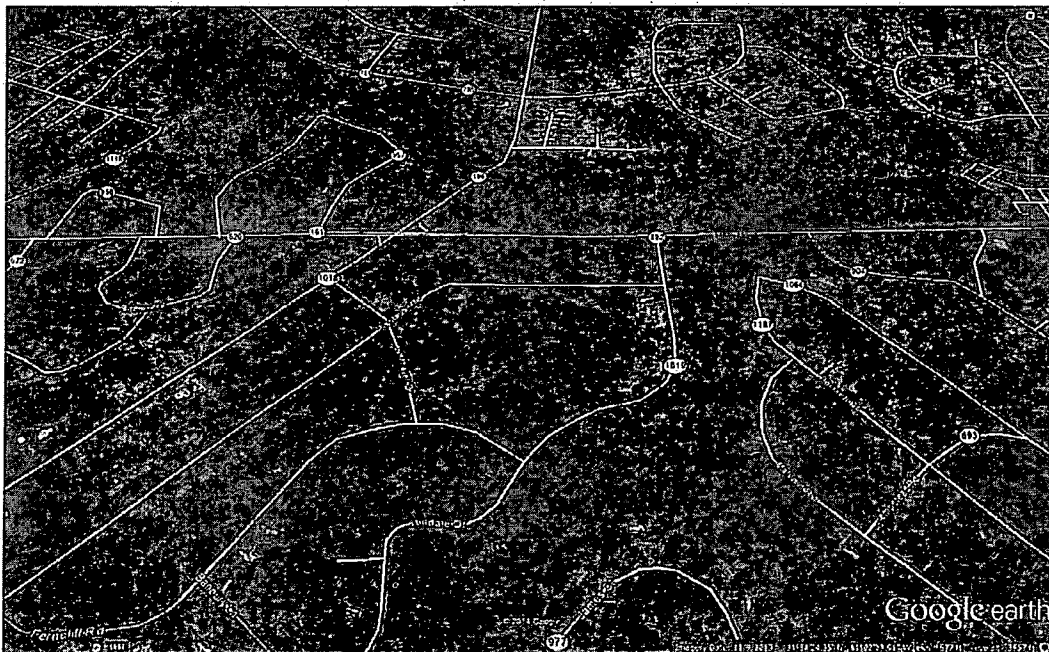


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Subject Photographs

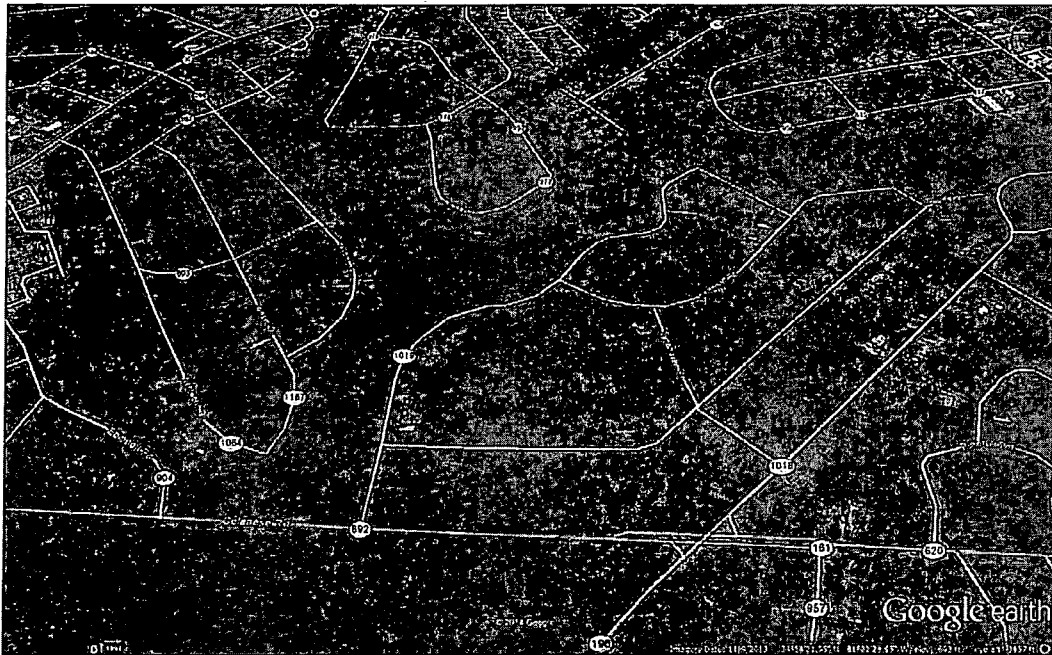


1. Aerial view of subject (Photo dated)

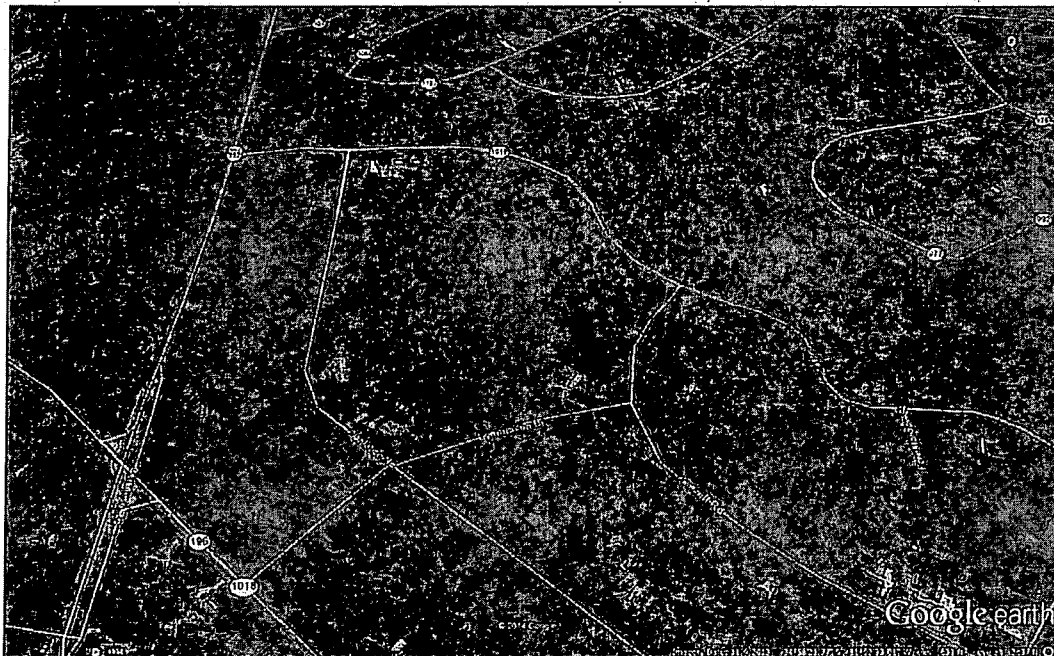


2. Aerial view looking north (Photo dated)

Subject Photographs



3. Aerial view looking south (Photo dated)



4. Aerial view looking east (Photo dated)



Valbridge
PROPERTY ADVISORS

Qualifications

14-177 – THOMASSONAPTS-164
RESTRICTED APPRAISAL REPORT



Valbridge
PROPERTY ADVISORS

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RESTRICTED APPRAISAL REPORT

Qualifications of H. Corbin Haskell, MAI
Valbridge Property Advisors | Robinson Company

Independent Valuations for a Variable World

State Certifications

State of South Carolina
CG-296

State of North Carolina
A5458

State of Georgia
217431

Education

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The Citadel

South Carolina Association of
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REALTORS® Institute

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Member: Appraisal Institute - MAI Designation
Greenville Real Estate Board

Appraisal Institute & Related Courses:

Real Estate Appraisal Principles
Basic Valuation Procedures
Standards of Professional Practice
Capitalization Theory and Techniques, Part A & B
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Capitalization Overview
Valuation of Lease Interests, Part I
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Income Valuation of small Mixed-Use Properties
National USPAP Update - Course 400
Numerous seminars sponsored by the Appraisal Institute
Valuation of Conservation Easements
Advanced Spreadsheet Modeling for Valuation Applications
SC Real Estate Broker A and B Courses
Marketability Studies: Advanced Considerations and Applications
Experience

Experience:

Appraiser/Consultant

Valbridge Property Advisors | Robinson Company (1981-Present)

Appraisal/valuation and consulting assignments, appraisal review,
right-of-way, conservation easements, litigation/expert testimony

Information on Valbridge Property Advisors

Valbridge covers the U.S. from coast to coast, and is one of the Top 3 national commercial real estate valuation and advisory services firms based on:

- Total number of MAIs (163 on staff)
- Total number of office locations (60 across the U.S.)
- Total number of staff (600+ strong)

Valbridge is owned by our local office leaders. Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.

Valbridge services all property types, including:

- Office
- Industrial
- Retail
- Apartments/multifamily/senior living
- Lodging/hospitality/recreational
- Land
- Special-purpose properties

Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements. Specialty services include:

- Portfolio valuation
- REO/foreclosure evaluation
- Real estate market and feasibility analysis
- Property and lease comparables, including lease review
- Due diligence
- Property tax assessment and appeal-support services
- Valuations and analysis of property under eminent domain proceedings
- Valuations of property for financial reporting, including goodwill impairment, impairment or disposal of long-lived assets, fair value and leasehold valuations
- Valuation of property for insurance, estate planning and trusteeship, including fractional interest valuation for gifting and IRS purposes
- Cost segregation studies
- Litigation support, including expert witness testimony
- Business and partnership valuation and advisory services, including partial interests

Independent Valuation for a Variable World



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239-325-8356 fax

valbridge.com

To: Blake Williams
Subject: Re: Burton v. Pitts matter

[Quoted text hidden]

----- Forwarded message -----

From: Everett McMillian <everett.mcmillian@nelsonmullins.com>
To: Bobbie Schilder <bobbie.schilder@nelsonmullins.com>
Cc:
Date: Fri, 17 Apr 2015 15:34:41 +0000
Subject: FW: Marjorie Cato Burton, et al. v. Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson; C.A.
No.: 2010-CP-46-2267

To file.

From: Roger B. Jellenik [mailto:rbjatty@mac.com]
Sent: Friday, April 03, 2015 9:44 AM
To: Hayes, John C. III Law Clerk (John C. Alfieris)
Cc: Sam Outten; Everett McMillian; Matthew B. Rosbrugh (matt@mbrlawllc.com)
Subject: Re: Marjorie Cato Burton, et al. v. Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson; C.A.
No.: 2010-CP-46-2267

Thank you.

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020
T. (803)424-1919
F. (803)424-1922
e. rbjatty@mac.com

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Thank you.

On Apr 3, 2015, at 9:20 AM, Hayes, John C. III Law Clerk (John C. Alfieris)
<jhayeslc@sccourts.org> wrote:

Good morning,

02083

I hope this email finds you doing well. Please see the attached Order for the above referenced case. Later today, I will be taking the Order to the Clerk of Court's office to be filed. I hope you all enjoy the Easter and Passover weekend.

Respectfully,

John Alfieris

Law Clerk to the Honorable John C. Hayes, III

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**4 attachments**



**noname.eml**  
11K



**07 20 2011 Hearing Transcript - 4823-4571-3184 v 1.pdf**  
2221K



**10-9-13 Hearing Transcript - 4825-7220-5344 v 1.pdf**  
3958K



**53. Plaintiff's Motion to Amend Complaint 2013.09.06 - 4845-9165-6474 v 1.pdf**  
9368K