STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas
Mikell Scarborough, Master-in-Equity

RECEIVED
OCT 26 2016
SC Court of Appeals

Case No. 2010-CP-10-5449
App. No. 2015-002550

Nathan Bluestein, Ettaleah Bluestein, M.D.,
Theodore Albenesius, III, and Karen Albenesius,

Appellants,

v.

Town of Sullivan's Island and Sullivan's Island Town Council,

Respondents.

RECORD ON APPEAL
Volume I – pp. 1-487

Robert H. Hood, Sr. (SC# 2599)
James B. Hood (SC #70212)
A. Walker Barnes (SC # 78485)
Deborah H. Sheffield, Of Counsel (SC #2757)
172 Meeting Street~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843)577-4435
Facsimile: (843) 722-1630
Attorneys for the Appellants

J. Brady Hair (SC # 9040)
Derk Van Raalte IV (SC # 9286)
Law Office of Brady Hair
2500 City Hall Lane (29406)
PO Box 61896
N. Charleston SC 29419
(843) 572-8700
Attorneys for the Respondents

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010- CP-10-5449

Nathan Bluestein

PLAINTIFF(S)

Town of Sullivans Island etc et al

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

2012 FEB -7 PM 12:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court: **By consent of the parties, and pursuant to Rule 53, this court hereby refers this case to the equity division of the court for final disposition. The Master-In-Equity shall enter final judgment with any appeals to be taken in accordance with 14-11-85. The reference fee shall be paid directly to the office of the Master-In-Equity; upon a failure to do so, the Master shall order the case to be dismissed without prejudice for failure to comply with the court's order.**

ORDER INFORMATION This order ☐ ends ☑ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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)
N/A		$
		$
		$

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

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

Circuit Court Judge

2128
Judge Code

2/2/12
Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-5449

Bluestein

PLAINTIFF(S)

Town of Sullivan's Island

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), 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

☐ **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.

FILED
2014 MAY 21 PM 12:10
JULIE ARMSTRONG
CLERK OF COURT

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : P's Motion for Summary Judgment is granted as to: 1) Injunction for Taking; 2) SCUTPA; 3) Breach of K accompanied by a Judgment Act.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

3062
Judge Code

5/19/2014
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodore Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
	)	Order Granting Summary Judgment to Defendants Regarding Breach of Contract by Accompanied by Fraudulent Act
Plaintiffs,	)	
	)	
Versus	)	
	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants.	)	

FILED
2014 DEC -4 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court pursuant to the Defendants' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.[1] Plaintiffs contend that, by enacting ordinances in 1995 and 2005, the Town deprived them of a right to a view by failing to cut (or allow others to cut) vegetation growing on town-owned land that lies between Plaintiffs' houses and the ocean. In and around 2009 the Town considered the possibility of a further amendment to the ordinances. As part of this the Town commissioned a consultant to perform a study. One product of the consultant's work was a proposed citizen questionnaire by which the Town might gather citizen input on the AL issues. The exact phrasing of the

[1] Plaintiffs describe their right with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

consultants draft questionnaire was not sent out to the public. Rather, a reworded version of the questionnaire was ultimately utilized. It is not clear how the change in wording came about. During this time there was also various communication between the Town and the consultant, including in at least one instance a directive that the consultant communicate with the Town directly, rather than with the public at large. The Plaintiffs claim that the Town's interactions with the consultant and use of the questionnaire in and around 2009 demonstrate the Town's fraudulent intent to harm the Plaintiffs by breaching the deed restriction promises. There was no evidence of fraud related to the passage of the actual 1995 or 2005 ordinances being challenged.

Law

Standards for Decision

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (SC 1997); Adamson v. Richland County School District One, 1998 WL 251387 (S.C.App. 1998). Mere denials contained within a party's pleadings are not sufficient under S.C.R.C.P. 56(e). And while the moving party has the initial burden of showing that no genuine issues of fact remain, there is no requirement that the moving party negate every aspect of the opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Thus, the opponent must "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing there is a *genuine issue for trial.*'" Baughman, 410 S.E.2d at 545, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Notably, while Summary Judgment may be inappropriate when *facts* remain in

dispute, the fact that the parties disagree on the legal interpretation of contract is a question of law for which Summary Judgment is particularly appropriate.

Legal Analysis

The Court finds that Summary Judgment is appropriate because the Defendants are immune from suit under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act bars damages from being awarded for the alleged governmental conduct. See S.C. Code 15-78-60 (1) ("legislative ... action or inaction"); (2) "administrative action or inaction of a legislative ... nature."); (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies."); (17) ("employee conduct outside the scope of his official duties or *which constitutes actual fraud*, actual malice, intent to harm, or a crime involving moral turpitude.") The Plaintiffs have sued for both Breach of Contract and Breach of Contract Accompanied by Fraudulent Act. They have specifically sought damages for the allegedly tortious fraud.[2] The distinction between Breach of Contract and Breach of Contract Accompanied by Fraudulent Act is, of course, the presence of "fraud." The Tort Claims Act tells us that the government is immune from fraud claims. Moreover, the allegedly fraudulent conduct, such as communicating with a consultant and drafting a public input questionnaire, unquestionably relates to the Town Council's legislative fact-finding process as it considered whether to adopt a future ordinance change. Legislative activities, and

[2] See Para. 107, SAC, in which the Plaintiffs seek "consequential, actual, and/or punitive damages ... for the independent tortious wrong" associated with the alleged Breach of Contract.

administrative action supporting legislative activities, are immune from suit. Summary Judgment is appropriate.[3]

This 26 day of Nov, 2014

Hon. Mikell Scarborough
Master in Equity

[3] As an additional sustaining ground the Court notes that none of the alleged fraudulent acts, which occurred in or around 2009, appear to relate to either of the two ordinances being challenged.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodore Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
	)	Order Granting Summary Judgment to Defendants Based on Plaintiffs' Lack of Right to a View
Plaintiffs,	)	
	)	
Versus	)	
	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants.	)	

FILED
2015 JUL 30 AM 10:29
JULIE J. ARMSTRONG
CLERK OF COURT

I. INTRODUCTION

This matter comes before the Court pursuant to the Town's Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.[1] Plaintiffs contend that the Town has deprived them of a right to a view by failing to cut (or allow others to cut) trees and shrubbery growing on town-owned land that lies between Plaintiffs' houses and the ocean. The Plaintiffs contend that the right they possess stems from a promise contained in 1991 deed restrictions. This Court has reviewed the deed restrictions and the Plaintiffs' arguments and concludes that the claimed promise was never made to the Plaintiffs.

[1] Plaintiffs describe their claim with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

The relevant facts are not disputable. This is confirmed by the fact that both the Plaintiffs and the Defendants *both* moved for Summary Judgment on this general issue. In so doing both parties implicitly represented to the Court that the question is a legal issue of contract interpretation.

The Court finds the following to be uncontrovertable and sufficient to allow interpretation of the deed / contract and resolution of the question before the Court:

1) The Plaintiffs own houses located at 2513 and 2411 Atlantic Avenue. See Para. 1, Second Amended Complaint (hereinafter, "SAC".)

2) The Plaintiffs houses are "front row houses" meaning that they are in the row of houses closest to the beach. See generally, Para. 50, SAC. See also, following diagram herein.

3) The Plaintiffs house parcels are not the closest parcel to the beach. The Town-owned parcel (TMS 529-10-00-087), known as the Accreted Land ("AL"), lies between the Plaintiffs properties and the beach. See Para. 35, SAC. The following diagram illustrates the layout.

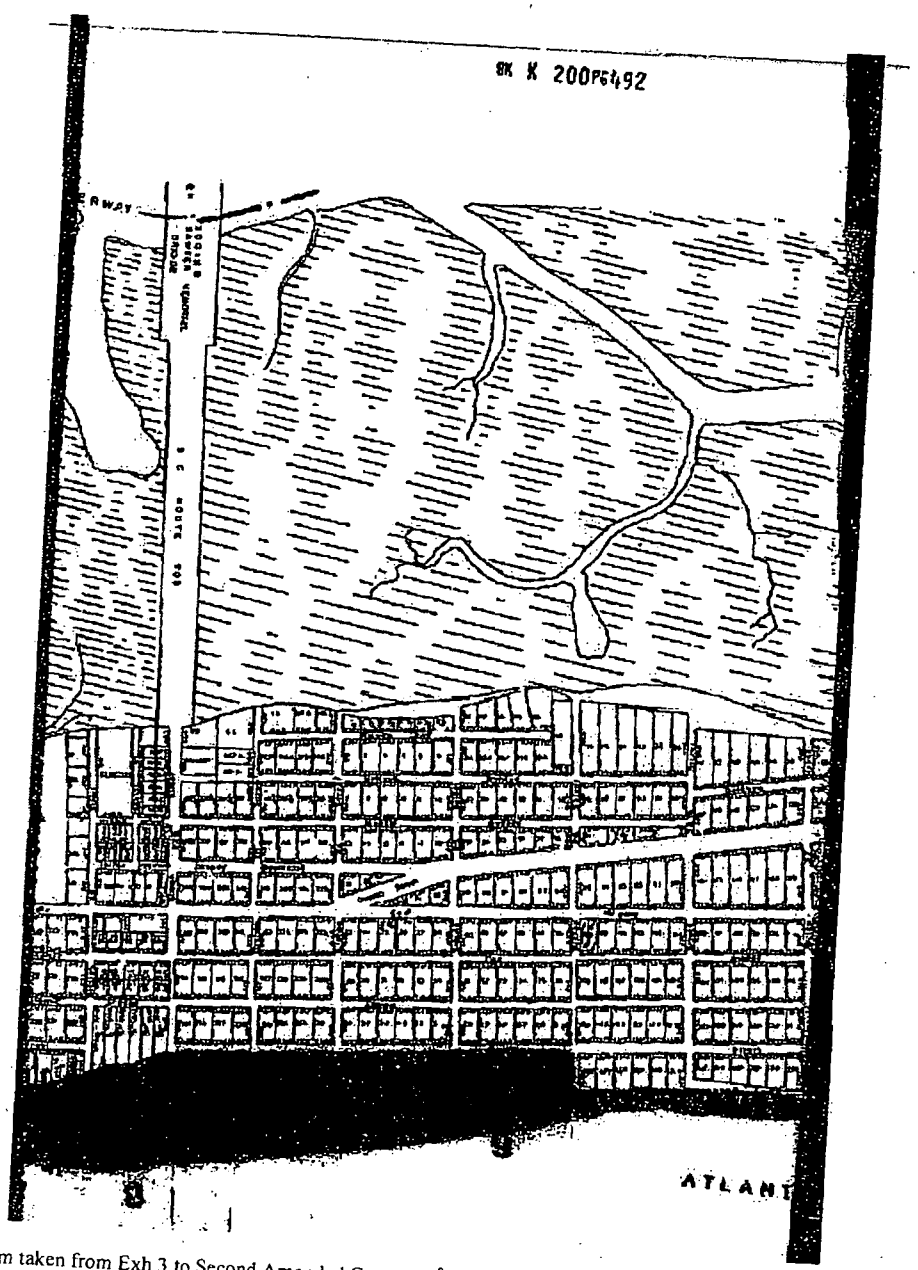


Diagram taken from Exh 3 to Second Amended Complaint[2]

[2] An identical diagram is contained within Exh 4 to the Second Amended Complaint (deed from LOLT to Town), recorded Bk K 200 PG507. The version from Exh. 3 is reproduced herein as it has a higher photocopy quality.

4) The AL is subject to certain deed restrictions as a result of the 1991 deed. A copy of this deed is attached as an Exhibit to the SAC and incorporated by reference herein.

5) The deed restrictions do not cover the entirety of the AL. See prior diagram showing an "unshaded" portion closest to Plaintiffs' properties.

6) In the vicinity of the Plaintiffs' properties, the "unshaded" portion of the AL that immediately abuts the Plaintiffs' seaward property line is colloquially known as "Bayonne Avenue Extension." This area is not subject to the AL deed restrictions and lies between the Plaintiffs' properties and the deed-restricted property. See Diagram.

7) Photographs exist reflecting the appearance of the AL in 1991;

8) The condition of the AL today is not in controversy and that the appearance differs from the exact way it looked in 1991;

9) Both parties argued to the Court that the words of the Deed Restrictions are clear. (The parties differ on the interpretation they would attach to these words. This disagreement is not one of fact, but rather is a question of law.);

10) Both parties argued to the Court that the following language quoted from the Deed Restriction Summary: "The scenic value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the entire property." As both parties cite this language it is clearly not in dispute.[3]

11) The Low Country Open Land Trust has a right to enforce the deed restrictions;

12) The Plaintiffs are "third party beneficiaries" under the deed restrictions and that the deed restrictions permit such persons to seek enforcement of the deed.

In addition to the above, there are also certain other "absolutes" that are not realistically capable of being disputed by either side in this case:

[3] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13, quoting the Lowcountry Open Land Trust's "Summary of Deed Restrictions."

1) The Lowcountry Open Land Trust (the grantor of the Deed Restrictions) has made annual inspection visits to the AL for the state purpose of assuring that the Town has faithfully honored the deed restriction requirements. See Affidavit of Hagood.

2) The Lowcountry Open Land Trust has for more than a decade, after every such visit, issued a written report finding that the Town is in compliance with the deed restrictions. See Affidavit of Hagood.

3) The Deed Restrictions, at Paragraph 2, contain the language "Notwithstanding the provisions of Paragraphs 1 and 3 and subject to the limitations of Paragraph 4, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean, and providing views of the ocean and beaches to its citizens."

4) Paragraph 2 of the Deed Restrictions is the only paragraph in the Deed Restrictions which makes mention of a view ***of*** the ocean and beaches.

5) The Deed Restrictions contain the language "The Town may enact ordinances and regulations affecting the Property which are more restrictive than these Regulations or which are not inconsistent with these Restrictions." Deed Restrictions, Para. 6.

6) The cutting ordinance in effect at the time of the 1991 deed restrictions was the Town's 1981 Ordinance. See Exh. 10 and 11, SAC.

7) The Town's 1981 Ordinance allowed for citizens to apply to the Town for permission to cut vegetation on the accreted land to trimmed height of not less than three (3) feet, provided the Town's Zoning Administrator made certain findings. See Exh. 9, SAC.

8) The Town's 1981 Ordinance did not expressly limit what species could be trimmed. See Exh. 9, SAC.

9) The Town's 1995 Ordinance raised the minimum trimmed height from three (3') feet to seven (7') feet. The 1995 Ordinance also added a species list limiting the plants that could be trimmed. See 1995 Ordinance attached as Exhibit to Defendants' Motion for Summary Judgment on All Causes of Action Due to Plaintiffs' Lack of Any Right to Control or Look Over Neighboring Parcels.

10) The Town's 2005 Ordinance adjusted the minimum after-trimming height to five (5') feet and retained the same species list as in the 1995 ordinance. See 2005 Ordinance attached as Exhibit to Defendants' Motion for Summary Judgment on All Causes of Action Due to Plaintiffs' Lack of Any Right to Control or Look Over Neighboring Parcels

11) The 1995 and 2005 Deed Restrictions allow less cutting than did the 1981 ordinance. As such, these ordinances are "more restrictive." See Para. 36, SAC; see also N. Bluestein Depo p. 71, lines 14-18; See also, 1981, 1995 and 2005 ordinances.

12) No cutting ordinance amendment has been passed since 2005. See Para. 133, SAC, seeking to invalidate 2005 ordinance as most recent listed version.

13) Since 1991, nature has caused plants to grow higher on the Accreted Land such that it no longer looks as it did in 1991. See Para. 37, SAC.

14) Since 1991 sand has naturally accreted on the Accreted Land such that the Accreted Land no longer looks exactly as it did in 1991. See Para. 19, SAC.

15) The AL remains undeveloped. See Photographs attached to SAC.

Law

Standard for Decision

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (SC 1997); Adamson v. Richland County School District One, 503 S.E.2d 752 (S.C.App. 1998). Mere denials contained within a party's pleadings are not sufficient under S.C.R.C.P. 56(e). And while the moving party has the initial burden of showing that no genuine issues of fact remain, there is no requirement that the moving party negate every aspect of the

opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Thus, the opponent must "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing there is a *genuine issue for trial.*'" Baughman, 410 S.E.2d at 545, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Notably, while Summary Judgment may be inappropriate when *facts* remain in dispute, the fact that the parties disagree on the legal interpretation of contract is a question of law for which Summary Judgment is particularly appropriate.

Legal Analysis

In general terms, the Plaintiffs contend that the 1991 Deed Restrictions contain a promise that front row home owners would always[4] be able to cut vegetation on the AL lying seaward of their houses under the same ordinance terms existing in 1991 when the deed was signed. As a matter of law, I find that the deed restrictions do not contain the promise the Plaintiffs claim.

1) **No Right to a View Across Bayonne Avenue.**

The Plaintiffs concede that no common law or statutory right to a view easement exists under South Carolina law. See Plaintiffs' Memorandum of Law and Equity in Opposition to Defendants' Motion for Summary Judgment and Motion to Strike at pg. 9; See also, Hill v. Beach Co., 306 S.E.2d 604 (SC 1983). The Plaintiffs instead base their claim to a view on the deed restrictions pertaining to the AL. See Id. However, whatever deed restrictions might apply to the most seaward portions of the AL do not apply to the Bayonne Avenue Extension strip

[4] The term of the deed restrictions appears to be fifty (50) years followed by a fifty (50) year renewal term.

of land lying closest to the Plaintiffs' parcels. See prior diagram. The Plaintiffs have no common law, statutory, or deed restriction-based right to be able to look across Bayonne Avenue. See Hill, 306 S.E.2d 604. There is nothing that would legally stop the Town from constructing a parking garage, wall, or hedgerow on the Bayonne Avenue Extension property, thus totally cutting off Plaintiffs' ability to even see the deed-restricted portion of the Accreted Land. Since the Plaintiffs' possess no legal right to look across Bayonne Avenue Extension to see the most inland edge of the deed-restricted portion of the AL, they cannot claim any right to look all the way to the far side of the AL to get an ocean view.

2) **The Deed Restrictions Do Not Promise the Plaintiffs a View and Do Not Promise that the Town's Vegetation Trimming Ordinances Will Remain Unchanged.**

The Deed Restrictions never promised that the Town would refrain from amending its AL cutting ordinances and never promised that the Plaintiffs' view would be unchanging. To the contrary, the Deed restrictions expressly granted the Town the "unrestricted authority" to control the growth of vegetation of the AL.

This controversy is resolved by Paragraph 2 of the Deed Restrictions. That Paragraph states "Notwithstanding the provisions of Paragraphs 1 and 3 and subject to the limitations of Paragraph 4, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for the purposes of mosquito control, scenic enhancement, public and emergency access

to the Atlantic Ocean, and providing views of the ocean and beaches to its citizens." Though Plaintiffs argued that portions of Paragraphs 1 and 3 of the Deed Restrictions should be applied to this dispute, such arguments are foreclosed by Paragraph 2's phrase "Notwithstanding the provisions of Paragraphs 1 and 3...." [5]

There is no dispute that this case centers on the Town's power and decisions of how to "trim and control growth of vegetation" on the AL. Accordingly, that requirement of Paragraph 2 is satisfied.

There is also no dispute that the trimming of vegetation at issue here is (among other things) related to "providing view of the ocean and beaches to its citizens." That is the central basis of the Plaintiffs' complaint. Consequently, it is clear that the Ordinances and plant height issues before the Court fall within Paragraph 2 in this regard as well.

Paragraph 2's phrase "unrestricted authority" conclusively settles this dispute in the Town's favor. The Plaintiffs' argue that the Deed Restrictions contained a promise from the Town that the rules governing vegetation trimming would never be changed to their detriment. Paragraph 2 says just the opposite. Paragraph 2

[5] Plaintiffs also, in various filings, have argued that "scenic enhancement" as used at various places in the deed is meant to encompass a view from the island towards the ocean. However, the very LOLT deed summary offered by the Plaintiffs elsewhere as authoritative belies such a reading. The deed summary clearly indicates that "scenic value" refers to the view of the AL from the beach. Further, if "scenic enhancement" meant "ocean view" there would be no purpose in separately describing the two purposes within Paragraph 2 of the deed. Notably, no other paragraph refers to ocean views. Thus, this case revolves around Paragraph 2.

says that the Town expressly reserved the "unrestricted authority" to change those rules.

Paragraph 6 further confirms that the Deed Restrictions do not contain a Town promise that the AL trimming rules would never change. Paragraph 6 specifically says that the Town may enact rules governing the AL which are *more restrictive* than what existed at the time the Deed Restrictions were signed. The 1995 and 2005 ordinances are more restrictive than that which existed in 1991. That is clear from the text. Further, the entire basis of the Plaintiffs' complaint is that the current rules are more restrictive. Paragraph 6 grants the Town express, independent authority for the 1995 and 2005 ordinances.

The Court further finds that reading the contract in the manner advocated by the Plaintiffs would violate South Carolina's caselaw on impairment of legislative power. In general terms the Plaintiffs argue that in accepting the 1991 Deed the Town promised not to change its zoning ordinances pertaining to the AL.[6] One Town Council must pass on to successor councils the full legislative authority of office. See Piedmont Public Service District v. Cowart, 459 S.E.2d 876 (SC App. 1986). If one read the 1991 Deed Restrictions to promise that later-elected City Council's were prevented from passing different zoning ordinances (as argued by Plaintiffs) this well-established law would be violated.

[6] See Deposition of E. Bluestein, p. 36, lines 8 – 11 ("Q: Okay. So again, the crux of it is that you believe that the deed restricts the Town from passing laws that violate the deed? A: Yeah.")

3) **Even Under the Vegetation Trimming Ordinance in Place When the Deed Restrictions Were Signed, the Plaintiffs Possessed No Right to Cut for a View.**

The Plaintiffs argue that the Town's 1995 and 2005 ordinance deprived them of a deed-based *right* to cut vegetation to three (3') feet under the 1981 ordinance that existed when the deed was accepted. Upon inspection of the 1981 Ordinance[7], the Court concludes that the Plaintiffs possessed no such right at the time the AL deed restrictions were imposed. The 1995 and 2005 ordinances cannot have deprived the Plaintiffs of a right they never possessed.

The 1981 Ordinance did not grant the Plaintiffs a *right* to cut in order to preserve their view. To be sure, the 1981 Ordinance did allow for cutting to a height of not less than three (3') feet when the height of vegetation became objectionable. It may even have been that such permit requests were granted routinely by the Town in order to improve the view of homeowners. However, the 1981 ordinance did not allow homeowners to cut as a matter of right. Instead, such permits were to issue "[w]hen the Zoning Administrator finds as a fact that bushes and trees create a hazard to the health, safety, and welfare of the Town in a particular area due to density, mosquito breeding, or standing water...." Sec. 21-39(A). Further, cutting was only permitted when "the cumulative effect of the trimming, cutting or pruning shall not be detrimental to the safety, welfare, and health of the people of the Town." In other words, under the 1981 Ordinance the Town had discretion to approve or deny cutting requests. Homeowners had no absolute "right" to cut

[7] The 1981 Ordinance was in place at the time the deed restrictions were imposed.

when the deed was executed in 1991 and thus the 1995 and 2005 ordinances cannot be said to have "taken" a right that they never possessed in the first place.

The Plaintiffs' lack of any right to control neighboring property to assure a view invalidates numerous causes of actions within the Complaint[8]

Declaratory Judgment (First Cause of Action)

Plaintiffs seek a declaration from this court adopting their view that the deed restrictions block the Town's 1995 and 2005 Ordinances and confer upon them a right to a view. For the reasons stated above, the Town is granted Summary Judgment on this claim. There is no common law right to a view. Moreover, the deed did not promise a right to a view or promise that the rules governing cutting on the AL would remain unchanged. Instead the deed restrictions left the Town with the unrestricted authority to control trimming on the AL as is relevant to this case. Further, the deed restrictions left the Town with the power to pass rules more restrictive than existed in 1991. The Plaintiffs therefore cannot be granted the relief they seek. Summary Judgment is appropriate.

Injunctive Relief[9] (Second Cause of Action)

[8] Separate discussion will not be made herein for the Plaintiffs' claims for an injunction against the collection of taxes, Unfair Trade Pratices, and Breach of Contract by Fraudulent Act as these were disposed of on Summary Judgment by way of separate order. However, had these not been separately disposed of then the Court would have granted Summary Judgment on those claims on the basis of the arguments contained herein. Thus, this Order shall be considered an additional sustaining ground with respect to the Court's judgment on those causes of action.

[9] By separate order the Court granted Summary Judgment on the Town's motion to dispose of the Injunctive Relief claim as it pertains to taxation issues.

This Court's analysis of the deed and "right to a view" compels that the Town be granted Summary Judgment on Plaintiffs' claim for injunctive relief. The Plaintiffs seek an injunction from this Court that would forbid the Town from enforcing the 1995 and 2005 zoning ordinances because these ordinances conflict with *Plaintiffs' reading* of the Deed Restrictions. For all of the reasons previously stated, the Plaintiffs' reading of the Deed Restrictions is flawed. The Town has not violated the deed restrictions or any other law. Accordingly, there is no basis for the issuance of an injunction to stop the Town from operating in its current, lawful fashion.

Writ of Mandamus (Third Cause of Action)

The Plaintiffs are not entitled to a Writ of Mandamus. The Plaintiffs have no common law right to control neighboring land in order to preserve their view. For the reasons previously stated, they also have no such right as a result of the deed restrictions. The deed restrictions specifically allow for the 1995 and 2005 ordinances. Consequently the Plaintiffs cannot be granted a Writ of Mandamus that would allow them to cut AL vegetation in violation of law. Further reasons supporting the Court's dismissal of the Mandamus order may be found in a separate Order.

Breach of Contract (Fourth Cause of Action)

For the reasons stated above and in a separate order regarding this cause of action, the Town is granted Summary Judgment on this claim. There is no common law right to a view. Moreover, the deed did not promise a right to a view or promise that the rules governing cutting on the AL would remain unchanged. Instead the deed restrictions left the Town with the unrestricted authority to control trimming on the AL as is relevant to this case. Further, the deed restrictions left the Town with the power to pass rules more restrictive than existed in 1991.

Since the Town had the authority under the deed to enact the 1995 and 2005 ordinances the Town cannot have breached the terms of the deed restrictions. Summary Judgment is appropriate.

Nuisance (Seventh Cause of Action)

For the reasons stated above, the Court concludes that the Town's 1995 and 2005 ordinances do not violate the Deed Restrictions. Accordingly, the current Town ordinance is valid. Further, the Ordinance itself cannot legally constitute a nuisance. See Home Sales Inc. v. City of North Myrtle Beach, 382 S.E.2d 463, 469 (SC App. 1989); Brading v. County of Georgetown, 490 S.E.2d 4, 8 (SC 1997). Acts of nature which may flow from an ordinance are not "acts" by the Town.

Inverse Condemnation (Eighth Cause of Action)

The Plaintiffs claim for Inverse Condemnation also fails as a matter of law. Inverse condemnation is a species of "taking" claim. Significantly, "[w]here the proscribed use is not part of the owner's title to begin with, no compensatory taking has occurred." McQueen v. SC Coastal Council, 580 S.E.2d 116, 119 (SC 2003); Lucas, 505 US at 1027. Thus, a seminal issue is whether or not the "right taken" was a right the plaintiff even owned. For the reasons previously described in this Order, I conclude that the Plaintiffs here have no relevant legal right and consequently have no inverse condemnation claim.

Contract Clause Claims (Ninth Cause of Action)

As described in regards to the Plaintiffs' Breach of Contract claim, the Court concludes that the Town honored the terms of the deed and that no "breach" occurred when the Town enacted the 1995 and 2005 ordinances. Given that the Town has complied with the alleged "contract" there can be no violation of the Contract Clause of the State or Federal constitutions. Accordingly, the Town is entitled to Summary Judgment.

This 19 day of July, 2015

Hon. Mikell Scarborough
Master in Equity

STATE OF SOUTH CAROLINA)	JN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NJNTH JUDICIAL CIRCUIT
)	
Nathan Bluestein, Ettaleah Bluestein,)	Case No. 10-CP-10-5449
Theodore Albenesius and Karen)	
Albenesius,)	Order Granting Defendants' Motion to Strike
)	Damages Claim Due To Location of OCRM
Plaintiffs,)	Critical Line
)	
Versus)	
)	
Town of Sullivan's Island and)	
Sullivan's Island Town Council,)	
)	
Defendants.)	

FILED
2015 JUL 30 AM 10:29
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court pursuant to the Defendants' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.[1] Plaintiffs contend that, by enacting ordinances in 1995 and 2005, the Town has deprived them of a right to a view by failing to cut (or allow others to cut) trees and shrubbery growing on town-owned land that lies between Plaintiffs' houses and the ocean. As will be shown, however, Plaintiffs can presently establish no damages against the Town because, *regardless of whatever Town ordinance might exist,* the vegetation Plaintiffs complain about lies within the OCRM "Critical Zone". Since the Plaintiffs lack a cutting permit from the State Coastal Council, the Plaintiffs

[1] Plaintiffs describe their right with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

cannot legally cut as desired no matter what Town permission might be issued and no matter what Town ordinance might be on the books. The Town's ordinance cannot have "damaged" the Plaintiffs or "taken" anything from them in light of this.

The Plaintiffs occupy "front row" lots on Sullivan's Island, meaning that no other *buildable lots* exist between Plaintiffs and the ocean. (Plaintiffs' parcels are 529-10-00-064 and 070). See Para. 50, Second Amended Complaint. That is not to say, however, that the Plaintiffs actually abut the beach. To the contrary, as shown in the following diagram at least one platted parcel (Parcel 529-10-00-087) owned by the Town exists between the Plaintiffs and the water. See diagram within Exhibit 4 to Second Amended Complaint.

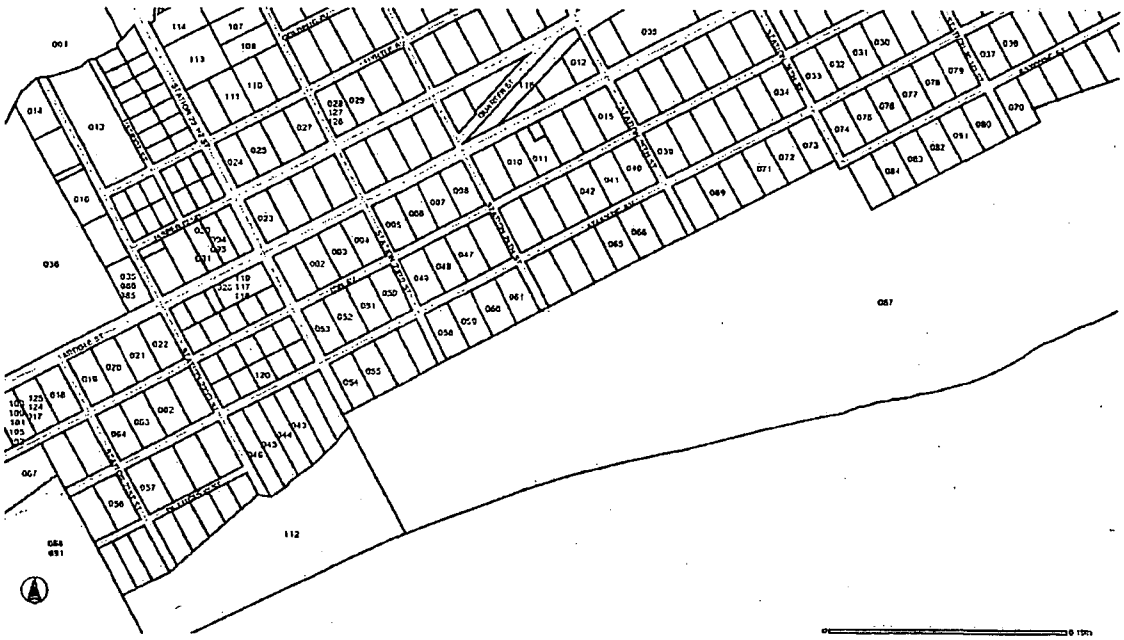


Diagram taken from: http://ccgisweb.charlestoncounty .org/website/Charleston/viewer.htm [2]

Over the years the Town's parcel 087 (hereinafter known as the "accreted land" or "AL") has grown in size due to sand accretion. See Para. 19, Second Amended Complaint. Plants growing on the AL have also matured. See Footnote 8, Second Amended Complaint. The Town has permitted nearby residents, such as the Plaintiffs, to enter the Town-owned AL to trim vegetation under certain terms and conditions specified by a zoning ordinance. See Para. 42 and 43, Second Amended Complaint. In 1991 when certain deed restrictions were put into place trimming was permitted to a height of three (3') feet. In 1995 the height limit changed to seven (7') for a few selected species and most species were no longer permitted to be trimmed at all.[3] In 2005 the height limit again changed, this time to five (5') feet, and the species restrictions were unchanged.

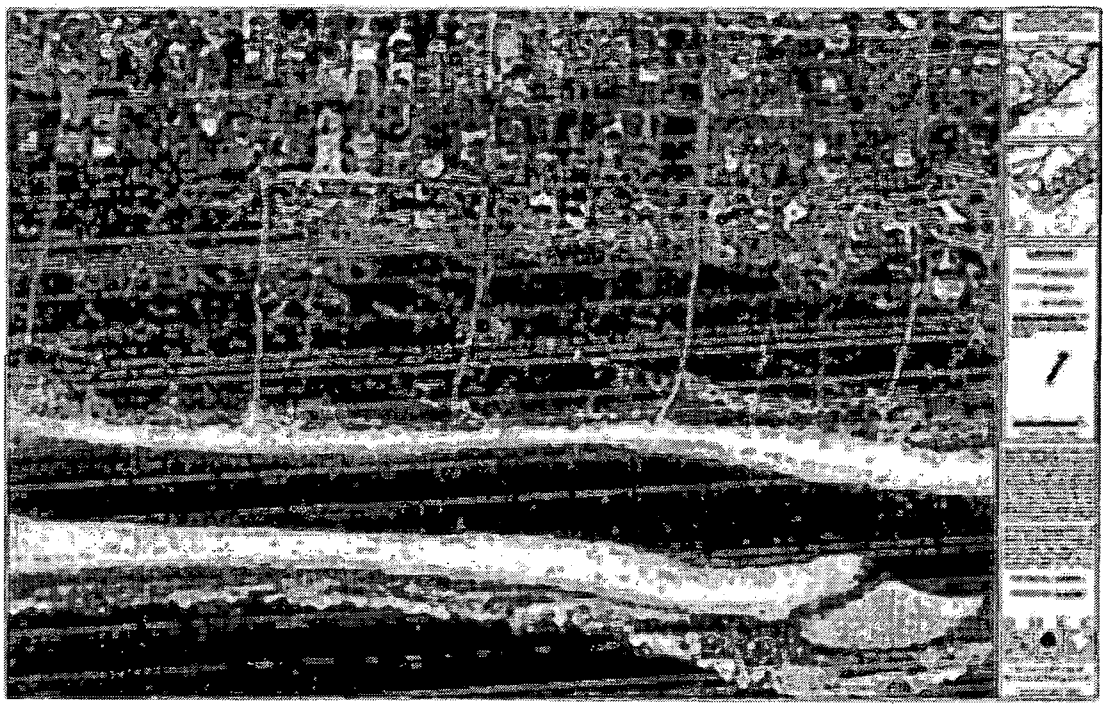
The Plaintiffs argue that the Town has an obligation to keep the AL property in the *exact* condition it existed on the day the deed was delivered in 1991.[4] Plaintiffs claim that by enforcing the 1995 and 2005 zoning ordinances, and thus restricting their ability to cut, the Town has "taken" value or otherwise damaged them because they can no longer see the ocean as well as they once did. Plaintiffs ignore, however, the fact that the OCRM Critical Line has moved over the years. At this point the Critical Line is such that it protects the overwhelming majority of the land which Plaintiffs wish to cut. This is documented by the following OCRM image:

---

[2] A very similar map was provided by Plaintiffs as Exhibit 3 and 4 to the Second Amended Complaint. For reading ease the official Charleston County electronic image is used herein.

[3] The "only vegetation that may be trimmed and pruned is limited to the following: Southern Waxmyrtle..., Eastern Baccharis ..., and Popcorn trees...." (See 1995 Ord, Sec 21-39.lE). Thus, live oak trees, pine trees, and other species could no longer be cut.

[4] The Plaintiffs argue that "natural state" must mean the precise and exact condition of the property on the day that the deed restrictions were signed in 1991. The Town maintains that such an interpretation of the term "natural state" is not only at odds with the deed as a whole, but a physical impossibility given the changing tides, winds and other forces of nature that impact the property.



Plaintiffs have received no permits from the State to allow such cutting. Consequently, they may not legally cut (as requested in their lawsuit) even if this Court were to rule in their favor or if the Town were to entirely repeal the ordinances about which they complain. This fact makes clear that they cannot be experiencing any damage or taking at this time as a result of Town activity. Summary Judgment is appropriate.

Legal Conclusions

The Town cannot have damaged the Plaintiffs in this action because the Plaintiffs lack State permission to perform their desired cutting. The Plaintiffs will have no improved view whether this Court rules in their favor or not. This reality conclusively demonstrates that the Town's ordinances cannot be damaging the Plaintiffs at present.

The Plaintiffs may not presently cut the vast majority of the vegetation that blocks their view. South Carolina's Regulation 30-ll(D)(6) prohibits "[t]he destruction of beach or dune vegetation seaward of the setback line ... unless there is no feasible alternative." Regulation 30-21(F)(4) goes on to state that "[a]ny activity that will disturb the beach or dune vegetation within the critical area requires a Coastal Council permit." The OCRM map makes absolutely clear that the overwhelming majority of the vegetation between the Plaintiffs and the ocean falls within the critical area and thus may not be disturbed without State approval.

It is also abundantly clear that the Plaintiffs lack State permission to perform the cutting they ask this Court to force upon Sullivan's Island. No less than the Chief Counsel for OCRM wrote to Counsel for the Plaintiffs on January 24, 2014, quoted the Plaintiff's own Complaint regarding the desired cutting, and put the Plaintiffs on notice that they must comply with Section 30-11 and 30-21. See Letter of Chief Counsel for OCRM. This letter clearly demonstrates that Plaintiffs do not have the required State permissions.

Breach of Contract

The Plaintiffs seek monetary damages from the Town claiming that their houses are worth less because a Town ordinance has stopped them from being able to cut vegetation which lies between Plaintiffs and the ocean. See Para. 89 – 114. The problem is, the OCRM rules mean that the Plaintiffs could not perform meaningful cutting whether the Town ordinance existed or not. Since one could ignore the Town ordinance entirely and the Plaintiffs would still not have a materially improved view, one cannot say that the Town has damaged the Plaintiffs. Thus, the Court strikes any claim for alleged Breach of Contract damages based on diminished view.

Inverse Condemnation

The Plaintiffs claim that the Town has essentially "taken" the value of their homes because, *but for* the Town ordinance, they could cut vegetation on the Accreted Land as desired. See Para. 124 – 126. The link between the Town's ordinance and Plaintiffs' view does not exist, however, since the OCRM Critical Line means that the Plaintiffs could not cut enough to obtain a view even if the Town repealed its ordinance tomorrow. The fact that State regulations mean that the Plaintiffs still cannot cut demonstrates that the Town's ordinance has effectively "taken" nothing from the Plaintiffs. Any such claim for damages is stricken.

Impairment of Contract

The Plaintiffs claim that the Town's ordinance amendments restrict cutting on the Accreted Land in a way that impairs the value of pre-existing deed restrictions because the Town's ordinance stops them from certain cutting. See Para. 128 – 133. As with every other cause of action, the problem is that the Plaintiffs lack OCRM permission to cut. Consequently, whatever diminished view they complain about would be basically unchanged even if the Town repealed the ordinance. This makes clear that the Town ordinance cannot have caused damage to the Plaintiffs. Any such claim for damages is stricken.

For the foregoing reasons, the Plaintiffs' claims for monetary damages are stricken.

This 9th day of July, 2015

Hon. Mikell Scarborough
Master in Equity

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-5449

FILED
2015 AUG -4 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT

Bluestein, et. al.	Town of Sullivan's Island, et. al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☒ Defendant or ☐ 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.

☐ **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

☐ **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: Defendants' Motion for Summary Judgment on Plaintiffs' causes of action for Declaratory Judgment, Claim of Mandamus, Nuisance, Untimeliness, and Contract Clause is Denied.

Breach of K

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge	3062 Judge Code	7/31/15 Date

FORM 4

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS FILED **CASE NO.** 2010 **CP**-10-5449

Bluestein, et. al. vs. Town of Sullivan's Island, et. al.

2015 AUG -4 PM 4:48

JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF(S) DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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.

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☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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: Plaintiffs' Motion to Reconsider, Alter, or Amend Master's Orders Granting Summary Judgment to Defendants' claims of Unfair Trade Practices Act, Request for Injunctions, and Breach of Contract Accompanied by a Fraudulent Act is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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.

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Circuit Court Judge 3062 **Judge Code** **Date** 7/31/15

SCRCP Form 4C (10/2011) Page 1 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 **CP**-10-5449

FILED
2015 AUG -5 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT

Bluestein, et. al.	Town of Sullivan's Island, et. al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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: Plaintiffs' Motion for Summary Judgment for Breach of Contract is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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.

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Circuit Court Judge — 3062 **Judge Code** — **Date** 7/31/15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodore Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
	)	Order Denying Plaintiffs' Summary Judgment Motion Regarding Breach of Contract
Plaintiffs,	)	
	)	
Versus	)	
	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants.	)	

FILED
2015 NOV -5 PM 3:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I. INTRODUCTION

This matter comes before the Court pursuant to the Plaintiffs' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.[1] Plaintiffs contend that the Town has deprived them of a right to a view by failing to cut (or allow others to cut) trees and shrubbery growing on town-owned land that lies between Plaintiffs' houses and the ocean. The Plaintiffs contend that the right they possess stems from a promise contained in 1991 deed restrictions. Plaintiffs filed a Motion for Summary Judgment asking for a ruling that the deed restrictions (contract) had been breached. This Court has reviewed the deed restrictions and

[1]Plaintiffs describe their claim with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

the Plaintiffs' arguments and concludes that the claimed promise was never made to the Plaintiffs.

The relevant facts are not disputable. This is confirmed by the fact that both the Plaintiffs and the Defendants *both* moved for Summary Judgment on this issue. In so doing both parties implicitly represented to the Court that the question is a legal issue of contract interpretation.

The Court finds the following facts to be beyond challenge and sufficient to allow interpretation of the deed / contract and resolution of the question before the Court:

1) The Plaintiffs own houses located at 2513 and 2411 Atlantic Avenue. See Para. 1, Second Amended Complaint (hereinafter, "SAC".)

2) The Plaintiffs houses are "front row houses" meaning that they are in the row of houses closest to the beach. See generally, Para. 50, SAC. See also, following diagram herein.

3) The Plaintiffs house parcels are not the closest parcel to the beach. The Town-owned parcel (TMS 529-10-00-087), known as the Accreted Land ("AL"), lies between the Plaintiffs properties and the beach. See Para. 35, SAC. The following diagram illustrates the layout.

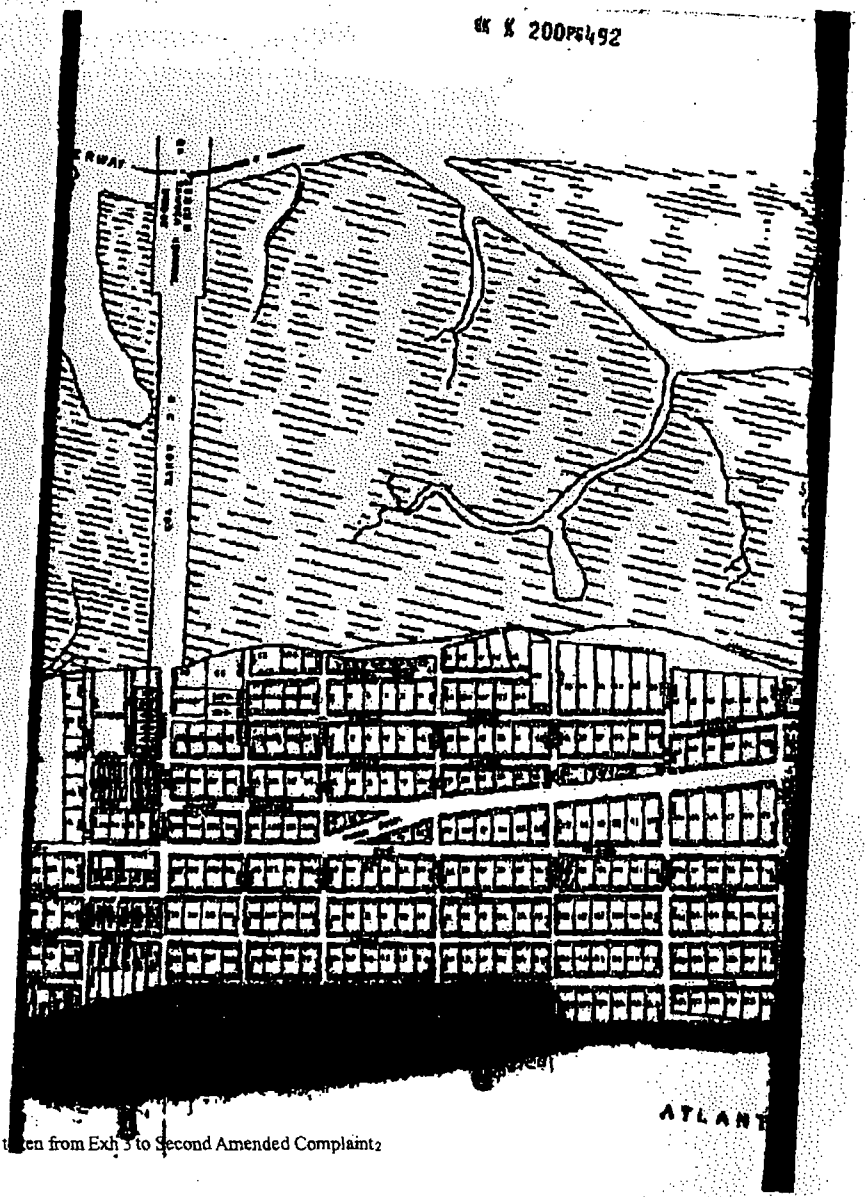

Diagram taken from Exh 3 to Second Amended Complaint[2]

[2] An identical diagram is contained within Exh 4 to the Second Amended Complaint (deed from LOLT to the Town), recorded Bk K 200 PG 507. The version from Exh. 3 is reproduced herein as it has a higher photocopy quality.

4) The AL is subject to certain deed restrictions as a result of the 1991 deed. A copy of this deed is attached as an Exhibit to the SAC and incorporated by reference herein.

5) The deed restrictions do not cover the entirety of the AL. See prior diagram showing an "unshaded" portion closest to Plaintiffs' properties.

6) In the vicinity of the Plaintiffs' properties, the "unshaded" portion of the AL that immediately abuts the Plaintiffs' seaward property line is colloquially known as "Bayonne Avenue Extension." This area is not subject to the AL deed restrictions and lies between the Plaintiffs' properties and the deed-restricted property. See Diagram.

7) Photographs exist reflecting the appearance of the AL in 1991;

8) The condition of the AL today is not in controversy and that the appearance differs from the exact way it looked in 1991;

9) Both parties argued to the Court that the words of the Deed Restrictions are clear. (The parties differ on the interpretation they would attach to these words. This disagreement is not one of fact, but rather is a question of law.);

10) Both parties argued to the Court the following language quoted from the Deed Restriction Summary: "The scenic value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the entire property." As both parties cite this language it is clearly not in dispute.[3]

11) The Low Country Open Land Trust has a right to enforce the deed restrictions;

12) The Plaintiffs are "third party beneficiaries" under the deed restrictions and that the deed restrictions permit such persons to seek enforcement of the deed.

In addition to the above, there are also certain other "absolutes" that are not realistically capable of being disputed by either side in this case:

[3] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13, quoting the Lowcountry Open Land Trust's "Summary of Deed Restrictions."

1) The Lowcountry Open Land Trust (the grantor of the Deed Restrictions) has made annual inspection visits to the AL for the stated purpose of assuring that the Town has faithfully honored the deed restriction requirements. See Affidavit of Hagood.

2) The Lowcountry Open Land Trust has for more than a decade, after every such visit, issued a written report finding that the Town is in compliance with the deed restrictions. See Affidavit of Hagood.

3) The Deed Restrictions, at Paragraph 2, contain the language "Notwithstanding the provisions of Paragraphs 1 and 3 and subject to the limitations of Paragraph 4, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean, and providing views of the ocean and beaches to its citizens."

4) Paragraph 2 of the Deed Restrictions is the only paragraph in the Deed Restrictions which makes mention of a view of the ocean and beaches.

5) The Deed Restrictions contain the language "The Town may enact ordinances and regulations affecting the Property which are more restrictive than these Regulations or which are not inconsistent with these Restrictions." Deed Restrictions, Para. 6.

6) The cutting ordinance in effect at the time of the 1991 deed restrictions was the Town's 1981 Ordinance. See Exh. 10 and 11, SAC.

7) The Town's 1981 Ordinance allowed for citizens to apply to the Town for permission to cut vegetation on the accreted land to trimmed height of not less than three (3) feet, provided the Town's Zoning Administrator made certain findings. See Exh. 9, SAC.

8) The Town's 1981 Ordinance did not expressly limit what species could be trimmed. See Exh. 9, SAC.

9) The Town's 1995 Ordinance raised the minimum trimmed height from three (3') feet to seven (7') feet. The 1995 Ordinance also added a species list limiting the plants that could be trimmed. See 1995 Ordinance attached as Exhibit to Defendants' Motion for Summary Judgment on All Causes of Action Due to Plaintiffs' Lack of Any Right to Control or Look Over Neighboring Parcels.

10) The Town's 2005 Ordinance adjusted the minimum after-trimming height to five (5') feet and retained the same species list as in the 1995 ordinance. See 2005 Ordinance attached as Exhibit to Defendants' Motion for Summary Judgment on All Causes of Action Due to Plaintiffs' Lack of Any Right to Control or Look Over Neighboring Parcels

11) The 1995 and 2005 Deed Restrictions allow less cutting than did the 1981 ordinance. As such, these ordinances are "more restrictive." See Para. 36, SAC; see also N. Bluestein Depo p. 71, lines 14-18; See also, 1981, 1995 and 2005 ordinances.

12) No cutting ordinance amendment has been passed since 2005. See Para. 133, SAC, seeking to invalidate 2005 ordinance as most recent listed version.

13) Since 1991, nature has caused plants to grow higher on the Accreted Land such that it no longer looks as it did in 1991. See Para. 37, SAC.

14) Since 1991 sand has naturally accreted on the Accreted Land such that the Accreted Land no longer looks exactly as it did in 1991. See Para. 19, SAC.

15) The AL remains undeveloped. See Photographs attached to SAC.

Law

Standards for Decision

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 19-1 (SC 1997); Adamson v. Richland County School District One, 503 S.E.2d 752 (S.C.App. 1998). Mere denials contained within a party's pleadings are not sufficient under S.C.R.C.P. 56(e). And while the moving party has the initial burden of showing

no genuine issues of fact remain, there is no requirement the moving party negate every aspect of the opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Thus, the opponent must "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing there is a *genuine issue for trial.*"' Baughman, 410 S.E.2d at 545, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Notably, while Summary Judgment may be inappropriate when *facts* remain in dispute, the fact that the parties disagree on the legal interpretation of contract is a question of law for which Summary Judgment is particularly appropriate.

Legal Analysis

In general terms, the Plaintiffs contend that the 1991 Deed Restrictions contain a promise that front row home owners would always[45] be able to cut vegetation on the AL lying seaward of their houses under the same ordinance terms existing in 1991 when the deed was signed. As a matter of law, I find that the deed restrictions do not contain the promise the Plaintiffs claim.

1) No Right to a View Across Bayonne Avenue.

The Plaintiffs concede that no common law or statutory right to a view easement exists under South Carolina law. Plaintiffs' Memorandum of Law and Equity in Opposition to Defendants' Motion for Summary Judgment and Motion to Strike, p. 9; See also, Hill v. Beach Co., 306 S.E.2d 604 (SC 1983). The Plaintiffs instead base their claim to a view on the deed restrictions pertaining to the

[4] The term of the deed restrictions appears to be fifty (50) years followed by a fifty (50) year renewal term.

most seaward portions of the AL that, significantly, do not apply to the Bayonne Avenue Extension strip of land lying closest to the Plaintiffs' parcels. See prior diagram. The Plaintiffs have no common law, statutory, or deed restriction-based right to be able to look across Bayonne Avenue. See Hill, 306 S.E.2d 604. There is nothing that would legally stop the Town from constructing a parking garage, wall, or hedgerow on the Bayonne Avenue Extension property, thus totally cutting off Plaintiffs' ability to even see the deed-restricted portion of the Accreted Land. Since the Plaintiffs' possess no legal right to look across Bayonne Avenue Extension to see the most inland edge of the deed-restricted portion of the AL, they cannot claim any right to look all the way to the far side of the AL to get an ocean view.

2) **The Deed Restrictions Do Not Promise the Plaintiffs a View and Do Not Promise that the Town's Vegetation Trimming Ordinances Will Remain Unchanged.**

The Deed Restrictions never promised that the Town would refrain from amending its AL cutting ordinances and never promised that the Plaintiffs' view would be unchanging. To the contrary, the Deed restrictions expressly granted the Town the "unrestricted authority" to control the growth of vegetation of the AL.

This controversy is resolved by Paragraph 2 of the Deed Restrictions. That Paragraph states "Notwithstanding the provisions of Paragraphs 1 and 3 and subject to the limitations of Paragraph 4, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for the

purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean, and providing views of the ocean and beaches to its citizens." Though Plaintiffs argued that portions of Paragraphs 1 and 3 of the Deed Restrictions should be applied to this dispute, such arguments are foreclosed by Paragraph 2's phrase "Notwithstanding the provisions of Paragraphs 1 and 3...." [5]

There is no dispute that this case centers on the Town's power and decisions of how to "trim and control growth of vegetation" on the AL. Accordingly, that requirement of Paragraph 2 is satisfied.

There is also no dispute that the trimming of vegetation at issue here is (among other things) related to "providing view of the ocean and beaches to its citizens." That is the central basis of the Plaintiffs' complaint. Consequently, it is clear that the Ordinances and plant height issues before the Court fall within Paragraph 2 in this regard as well.

Paragraph 2's phrase "unrestricted authority" conclusively settles this dispute in the Town's favor. The Plaintiffs' argue that the Deed Restrictions contained a promise from the Town that the rules governing vegetation trimming would never

[5] Plaintiffs also, in various filings, have argued that "scenic enhancement" as used at various places in the deed is meant to encompass a view from the island towards the ocean. However, the very LOLT deed summary offered by the Plaintiffs elsewhere as authoritative belies such a reading. The deed summary clearly indicates that "scenic value" refers to the view of the AL from the beach. Further, if "scenic enhancement" meant "ocean view" there would be no purpose in separately describing the two purposes within Paragraph 2 of the deed. Notably, no other paragraph refers to ocean views. Thus, this case revolves around Paragraph 2.

be changed to their detriment. Paragraph 2 just the opposite. Paragraph 2 says that the Town expressly reserved the "unrestricted authority" to change those rules.

Paragraph 6 further confirms that the Deed Restrictions do not contain a Town promise that the AL trimming rules would never change. Paragraph 6 specifically says that the Town may enact rules governing the AL which are *more restrictive* than what existed at the time the Deed Restrictions were signed. The 1995 and 2005 ordinances are more restrictive than that which existed in 1991. That is clear from the text. Further, the entire basis of the Plaintiffs' complaint is that the current rules are more restrictive. Paragraph 6 grants the Town express, independent authority for the 1995 and 2005 ordinances.

The Court further finds that reading the contract in the manner advocated by the Plaintiffs would violate South Carolina's caselaw on impairment of legislative power. In general terms the Plaintiffs argue that in accepting the 1991 Deed the Town promised not to change its zoning ordinances pertaining to the AL.[6] One Town Council must pass on to successor councils the full legislative authority of office. See Piedmont Public Service District v. Cowart, 459 S.E.2d 876 (SC App. 1986). If one read the 1991 Deed Restrictions to promise that later-elected City Council's were prevented from passing different zoning ordinances (as argued by Plaintiffs) this well-established law would be violated.

[6] See Deposition of E. Bluestein, p. 36, lines 8 – 11 ("Q: Okay. So again, the crux of it is that you believe that the deed restricts the Town from passing laws that violate the deed? A: Yeah.")

3) **Even Under the Vegetation Trimming Ordinance in Place When the Deed Restrictions Were Signed, the Plaintiffs Possessed No Right to Cut for a View.**

The Plaintiffs argue that the Town's 1995 and 2005 ordinance deprived them of a deed-based *right* to cut vegetation to three (3') feet under the 1981 ordinance that existed when the deed was accepted. Upon inspection of the 1981 Ordinance[7], the Court concludes that the Plaintiffs possessed no such right at the time the AL deed restrictions were imposed. The 1995 and 2005 ordinances cannot have deprived the Plaintiffs of a right they never possessed.

The 1981 Ordinance did not grant the Plaintiffs a *right* to cut in order to preserve their view. To be sure, the 1981 Ordinance did allow for cutting to a height of not less than three (3') feet when the height of vegetation became objectionable. It may even have been that such permit requests were granted routinely by the Town in order to improve the view of homeowners. However, the 1981 ordinance did not allow homeowners to cut as a matter of right. Instead, such permits were to issue "[w]hen the Zoning Administrator finds as a fact that bushes and trees create a hazard to the health, safety, and welfare of the Town in a particular area due to density, mosquito breeding, or standing water. ..." Sec. 21-39(A). Further, cutting was only permitted when "the cumulative effect of the trimming, cutting or pruning shall not be detrimental to the safety, welfare, and health of the people of the Town." In other words, under the 1981 Ordinance the Town had discretion to balance interests and approve or deny cutting requests. Homeowners had no

[7] The 1981 Ordinance was in place at the time the deed restrictions were imposed.

"right" to cut when the deed was executed in 1991 and thus the 1995 and 2005 ordinances cannot be said to have "taken" a right that they never possessed in the first place.

Having determined that the deed did not "promise" the Plaintiffs what they claim, the Plaintiffs' Motion for Summary Judgment must respectfully be denied.

This 17 day of October 2015

Hon. Mikell Scarborough
Master in Equity

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 **CP-**5449

Bluestein, et. al. ; Town of Sullivan's Island, et. al.

PLAINTIFF(S) DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **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

☐ **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: Plaintiffs' Motion for Reconsideration of this Court's Order granting Defendants' Motion to Strike Damages Claim Due to Location of OCRM Critical Line and Order Granting Summary Judgment to Defendants Based on Plaintiffs' Lack of Right to a View is hereby respectfully Denied.

AND IT IS SO ORDERED!

FILED
2015 NOV -5 PM 3:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

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

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

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

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

Circuit Court Judge

3062
Judge Code

Date 4/5/15

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4

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

FILED
2015 NOV 10 PM 4:36
JULIE J. ARMSTRONG
CLERK OF COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 **CP**-10-5449

Bluestein, et. al.	Town of Sullivan's Island, et. al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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

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

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

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

Circuit Court Judge | 3062 **Judge Code** | 11/10/15 **Date**

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	**Case No. 2010-CP-10-5449**
	)	
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodore Albenesius and Karen Albenesius,	)	**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' NUISANCE, BREACH OF CONTRACT, AND MANDAMUS CLAIMS**
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants,	)	

FILED
2015 NOV 10 PM 4:36
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER comes before the Court pursuant to the Defendants' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island ("Town") complaining over the Town's management of Town owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures Plaintiffs' view of the beach. Plaintiffs contend that ordinances enacted in 1995 and 2005 deprive them of a right to a view by failing to cut trees and shrubbery growing on Town owned land that is situated between Plaintiffs' houses and the Atlantic Ocean. Plaintiffs further argue that as a result of the 1995 and 2005 ordinances, the Accreted Land ("AL") has become an actionable nuisance because wildlife has flourished within the AL and may cross onto their properties causing a higher risk of human interaction with varmints, bugs, coyotes, and poisonous snakes. Plaintiffs further allege the increased plant material may increase the risk of fire.

STANDARD OF REVIEW

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (SC 1997); Adamson v. Richland County School District One, 503 S.E.2d 752 (Ct. App. 1998). While the moving party has the initial burden of showing that no genuine issues of fact remain, there is no requirement that the moving party negate every aspect of the opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323(1986)). Therefore, the opponent must do more than simply show that there is some "metaphysical doubt as to the material facts," but must come forward with "specific facts showing there is a genuine issue for trial." Baughman, 410 S.E.2d 537, 545 (SC 1991).

LEGAL CONCLUSIONS

Plaintiffs argue that unchecked plant growth on the AL constitutes a nuisance by providing wildlife habitat to varmints which become a food source to dangerous animals such as coyotes and poisonous snakes. The basis of Plaintiffs' argument is that the Town created a nuisance per se or a nuisance per accidens when amendments to a 1981 ordinance were enacted and enforced in 1995 and 2005. See Pls.' Second Am. Complaint at Para. 36. Plaintiffs seek to force the Town to allow the cutting of plant growth back to the 1981 ordinance standards, or in the alternative, monetary damages.

A. Plaintiffs do not have a nuisance per se claim or a nuisance per accidens claim.

"The traditional test for determining what is a nuisance per se is that the nuisance has become dangerous at all times and in all circumstances to life, health or property." Suddeth v. Knight, 280 S.C. 540, 314 S.E.2d 11 (Ct. App. 1984). "A nuisance per accidens is an act, occupation or structure which is not a nuisance per se, but which may become a nuisance by

reason of circumstances, location or surrounding." Neal v. Darby, 282 S.C. 277, 318 S.E.2d 18 (Ct. App. 1984).

Plaintiffs argue that because of the Town's actions in enacting and enforcing the 1995 and 2005 amended ordinances, a nuisance was directly created by increasing wildlife, which poses a serious health threat at all times to the Plaintiffs. However, this Court finds that while there may be an increase in bugs, rats, and other wildlife, there is no immediate threat to Plaintiffs' health and well-being.

Next, Plaintiffs argue that if there is no nuisance per se then a nuisance per accidens was created by the Town when they restricted the cutting of shrubbery and trees. This Court finds that the Town's enactment and enforcement of the amended ordinance does not constitute a nuisance per accidens because any nuisance that may occur is a result of nature which may occur no matter the height of the vegetation and not as a result of the lawful act of the Town. There is no evidence that the Town planted trees, fertilized bushes, or imported wildlife. Tree growth and mosquito mating are acts of nature, and cannot be a wrongful act by the Town. *See* Home Sales, Inc. v. City of North Myrtle Beach, 382 S.E.2d 463, 469 (Ct. App. 1988). Once a valid zoning law is enacted, the Town's authority under the police powers is to see that the terms of the law are carried out.

B. Plaintiffs do not have a public nuisance claim or private nuisance claim.

A nuisance is public because of the danger to the public which might have been created by the nature or character of the thing or activity itself. State v. Turner, 198 S.C. 487, 18 S.E.2d 372, 375 (S.C. 1942). A law cannot constitute a public nuisance. Home Sales, Inc. v. City of North Myrtle Beach, 382 S.E.2d 463, 469 (Ct. App. 1988). Additionally, nothing is a nuisance which the law itself authorizes. Id. A nuisance is private only because the individual as distinguished from the public has been or may be injured. Id. To maintain an action for private

nuisance, a wrongful act of the defendant must be shown and the maintenance of the nuisance must be the natural and proximate cause of the injury suffered by the plaintiff. Id. State law gives municipalities the authority to enact zoning ordinances. See S.C. Code Ann. Title 6, Chapter. 29.

Plaintiffs' claims of a public nuisance cannot stand against the Town because their argument alleges a duly enacted law constitutes a nuisance. This Court has in two previous Orders (August 4, 2015 and November 5, 2015) found that the amendments to the 1981 ordinance were lawful. The Town's legislative passages of the 1995 and 2005 zoning laws are lawful acts and are therefore not a public nuisance. Contracts involving legislative functions and governmental powers may not bind a future council. City of Beaufort v. Beaufort-Jasper Water and Sewer Authority, 325 S.C. 174, 480 S.E.2d 728 (SC 1997).

The acts of one council cannot serve to bind subsequent council's actions. There is nothing wrongful about the Town Council enacting these ordinances. Nor is there a breach of contract or contract clause violation here. There is no lawful provision allowing for zoning by referendum. I'On, L.L.C v. Town of Mount Pleasant, 338 S.C. 406; 526 S.E.2d 716 (SC 2000).

Thus, this Court finds there is no action for private nuisance. No evidence was presented that the Town performed specific and wrongful acts such as planting trees, fertilizing bushes, or importing wildlife. Plant growth and an increase in the wildlife population are the result of acts of nature and not by any act of the Town other than by enforcement of lawful zoning ordinance criteria.

C. Plaintiff is barred from seeking monetary damages.

Furthermore, the South Carolina Tort Claims Act bars nuisance damages from being awarded against the Town. "The governmental entity is not liable for a loss resulting from: (7) a nuisance." S.C. Code Ann. § 15-78-60(7).

CONCLUSION

The logic of Home Sales fully disposes of Plaintiffs' nuisance claim. The 1995 and 2005 zoning ordinances were valid legislative acts passed by the Town. State law gives the Town the authority to enact zoning ordinances and there were no unlawful acts enacted by the Town.

Accordingly, there are no genuine issues of material fact presented to this Court and therefore I find that summary judgment is proper. Therefore, Defendants' Motion for Summary Judgment on Plaintiffs' nuisance claim is Granted. As a consequence, the claim for mandamus must fail as well.

AND IT IS SO ORDERED!

The Honorable Mikell R. Scarborough
Master-In-Equity, Charleston, South Carolina

Charleston, South Carolina

November 10, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius, individually and as taxpayers of Charleston County and the Municipality of the Town of Sullivan's Island, Plaintiffs,	)	C/A No. 10-CP-10-5449
Versus	)	**SECOND AMENDED COMPLAINT (Non-Jury)**
Town of Sullivan's Island and Sullivan's Island Town Council, Defendants.	)	

FILED
2013 DEC 10 PM 2:51
JULIE J ARMSTRONG
CLERK OF COURT
BY

INTRODUCTION

The Plaintiffs, Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius (collectively hereinafter "Plaintiffs"), individually and among many others similarly situated,[1] and as taxpayers of Charleston County and as taxpayers, residents, property owners and registered voters of the Municipality of the Town of Sullivan's Island, complaining of the Defendants, the Town of Sullivan's Island (hereinafter "Town") and the Sullivan's Island Town Council (hereinafter "Town Council") (collectively hereinafter "Defendants"), would respectfully show unto this Honorable Court as follows:

1. Plaintiffs Nathan Bluestein and Ettaleah Bluestein, M.D. (hereinafter "Bluesteins") reside at 2513 Atlantic Avenue on Sullivan's Island. Plaintiffs Theodore Albenesius, III and Karen Albenesius (hereinafter "Albenesiuses") reside at 2411 Atlantic Avenue on Sullivan's Island.

[1] To date, property owners of approximately one hundred and eighteen (118) lots on Sullivan's Island have endorsed this lawsuit. A map of the endorsers' properties is attached as **Exhibit 1**. Of those endorsing this lawsuit, a majority (64 of 118) own lots which are not on the "front row" of houses closest to the Atlantic Ocean.

2. The Town is a municipal governmental entity of the State of South Carolina which has a Council / Mayor form of government.

3. The Town Council is the Town's legislative body which adopted and approved the transfer of real properties at issue in this lawsuit. The Town Council is composed of a Mayor and six (6) council members elected at large. These officials enact ordinances and resolutions relative to municipal sources, levy taxes, establish appropriations, issue debt and institute other fees and regulations. Under the Council form of government, the Mayor acts as chief executive officer.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the declaratory and injunctive claims of this Complaint pursuant to Section 15-53-10, *et seq.*, of the South Carolina Code of Laws and Rule 57 of the South Carolina Rules of Civil Procedure to settle a justiciable controversy between the parties.

5. This Court has jurisdiction over the inverse condemnation, public and/or private nuisance and constitutional violation claims of this Complaint pursuant to state and federal constitutional law, as well as Section 28-2-10, *et seq.*, of the South Carolina Code of Laws.

6. Venue is proper in this Honorable Court because the properties at issue are located in, the property rights were acquired in, the contract and/or deed restrictions and/or prior vested property rights at issue were agreed to in, and the conduct complained of in this lawsuit is and has been occurring in Charleston County.

GENERAL ALLEGATIONS

7. Plaintiffs, as taxpayers, residents, registered voters and property owners, have a direct and personal interest in the proper use and allocation of tax receipts by Defendants.

8. Improper use and allocation of tax receipts by Defendants is a matter of immense public importance.

9. Plaintiffs have sustained, are sustaining and are in danger of further sustaining, prejudice from invalid and illegal legislative action by Defendants, including truly individual injuries unique to their real property.

10. Plaintiffs have a private interest in this suit in equity, which they have brought against public authorities, to set aside and prevent illegal acts.

11. Plaintiffs have suffered harm from the *ultra vires* acts of Defendants as hereinafter alleged.

12. The injuries charged herein are as a result of Defendants' actions and inaction are private injuries which the Town's taxpayers and the County of Charleston are the individual sufferers, rather than the general public.

13. The Town's taxpayers and the County of Charleston constitute a class specially damaged by the alleged unlawful acts and therefore the said taxpayers have a special interest in the subject matter of this suit, distinct from that of the general public.[2]

14. Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts, and this lawsuit seeks to

[2] Although, at the present time, Plaintiff makes no allegation or claim of a formal class-action lawsuit.

hold Defendants accountable for unlawful actions and inaction and provide future guidance.

15. Plaintiffs have standing not only as taxpayers but also as third-party beneficiaries to a contract and/or deed into which the Town agreed on behalf of the residents, registered voters and property owners of Sullivan's Island.

SPECIFIC ALLEGATIONS

16. By deed dated December 28, 1949 by the War Assets Administration of the United States recorded in the Register Mesne Conveyance Office for Charleston County in Book K51 at page 271-286 and through enactment of South Carolina Act Number 420 of the Acts of the Legislatures for 1953, the Town was given the right to sell and dispose in fee simple over ninety (90) acres of accreted beach-front property (hereinafter "Accreted Land").

17. Upon information and belief, in the late 1960s or early 1970s, the Town offered to its resident property owners the opportunity to purchase certain property rights to the lands directly in front of the ocean front row properties.

18. Upon information and belief, certain resident property owners purchased in the late 1960s or early 1970s the rights to insure there would never be any houses built directly in front of their ocean front row properties.

19. In the 1980s, a 40-year study conducted by the South Carolina Coastal Council showed an annual accretion rate of the Accreted Land ranging from one (1) foot of erosion to 17.3 feet of accretion. This high accretion rate placed Sullivan's Island as one of a handful of barrier islands in South Carolina that has actually gained sand and land mass during the past century.

20. In the late 1980's and early 1990's, the Town decided to enact measures in order to protect the Accreted Land from commercial development. The Town entered into a deed restriction and transfer plan. The value of the Accreted Land at that time was estimated to be fifty million ($50,000,000.00) Dollars.

21. The Town's deed restriction and transfer plan first involved selling the Accreted Land to the Lowcountry Open Land Trust, (hereinafter "LOLT"), a non-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the preservation of scenic vistas and open space. LOLT's purpose is to preserve and conserve natural areas.

22. The Town's deed restriction and transfer plan then involved having the LOLT place restrictions on the Accreted Land in a deed upon a subsequent transfer of the Accreted Land back to the Town, with the LOLT retaining third-party enforcement rights. According to the LOLT's own "Deed Restriction Summary," (attached as **Exhibit 2**), the transfer of ownership of the accreted land was "necessary to ensure enforceability of the restrictions and prevent a future Town Council with different motivations from changing or weakening the restrictions or doing away with them altogether." Paragraph 3, Page 1, Exhibit 2.

23. The Town's deed restriction and transfer plan involved raising money to give to the LOLT so that it could purchase the Accreted Land.

24. In late 1990, upon information and belief, the Town concluded a fundraising effort which collected approximately $17,000.00. The Town then gave these funds to the LOLT for the purchase of the Accreted Land, with the understanding that the LOLT would transfer the Accreted Land back to the Town.

25. At least ten of the donations which were solicited by the Town were from individuals who currently endorse the Plaintiffs' position in this lawsuit. Upon information and belief, at least $3,300.00 of the total donations collected by the Town used to transfer the Accreted Land to the LOLT, and thus protect the Accreted Land from commercial development, were given by endorsers of Plaintiffs' position in this lawsuit.

26. On February 12, 1991, in formal consideration of ten ($10.00) Dollars, the Town executed a deed and/or contract granting the Accreted Land to the LOLT. On February 14, 1991, this deed and/or contract was recorded in the Register Mesne Conveyance Office for Charleston County in Book K200 at pages 484-495. (Attached as **Exhibit 3**).

27. Simultaneously, on February 12, 1991, in consideration of ten ($10.00) Dollars, the LOLT executed a deed and/or contract subject to certain easements and restrictions, conveying the Accreted Land back to the Town. On February 14, 1991, this deed and/or contract was recorded in the Register Mesne Conveyance Office for Charleston County in Book K200 at pages 496-510. The rights and obligations of the LOLT, Town, and Town residents with regard to the Accreted Land are set forth in the deed and/or contract and incorporated herein by reference. (Attached as **Exhibit 4**).

28. According to the LOLT's own "Deed Restriction Summary," the primary purpose of the Town/LOLT deed restriction plan was to "maintain[n] the natural character of the property and protec[t] the [Accreted Land] from future development and commercialization." Paragraph 5, Page 2, Exhibit 2.

29. Upon information and belief, in April 1989 the Town, through its Real Estate Committee, divided the Accreted Land into eleven (11) parcels.

30. The parcels comprising the Accreted Land are shown on an aerial map of Sullivan's Island taken in October 1989 by photographers employed by the South Carolina Department of Natural Resources. (Attached as **Exhibit 5**).

31. This lawsuit applies exclusively to those portions of the Accreted Land marked as areas "A", "C", and "E" on the map attached as Exhibit 5. The areas on the attached map marked "B" and "D" represent portions of the Accreted Land adjacent to Fort Moultrie and the Sullivan's Island Elementary School, areas which do not relate to any of the Plaintiffs' causes of action in this lawsuit.

32. In October of 1989, shortly *before* the deed and/or contract was entered into by the Town and LOLT, several photographs were taken by the National Oceanic and Atmospheric Administration. These photographs show high-resolution images of the Accreted Land. (Attached as **Exhibits 6-A, 6-B, 6-C and 6-D**).

33. As was required by the deed and/or contract that was entered into by the Town and LOLT, the Town and/or LOLT took on-site photographs of the Accreted Land as it existed in February 1991. As the attached photographs show, there were no trees or vegetation taller than three (3) feet between the front or ocean front row properties and the Atlantic Ocean. (Attached **Exhibits 6-E, 6-F, 6-G, 6-H, 6-I, 6-J and 6-K**).

34. In 1992 and 1994, several photographs were taken by an endorser of this lawsuit. (Attached as **Exhibits 7-A, 7-B, 7-C, 7-D, 7-E and 7-F**).

35. The Plaintiffs' properties are located immediately adjacent to the Accreted Land shown in Exhibits 6-A, 6-B, 6-C, 6-D, 6-E, 6-F, 6-G, 6-H, 6-I, 6-J, and

6-K, 7-A, and 7-B. As the pictures plainly depict, there was no unchecked overgrowth which completely obstructed any view of the Atlantic Ocean and beach. Instead, the accreted land was comprised of sea oats and wildflowers, all three (3) feet or lower, with no trees or tall shrubs in the portions of the Accreted Land adjacent to what are now Plaintiffs' properties.

36. Acting under the guise of its legislative and executive powers, Defendants enacted, and have since enforced, ordinances in 1995 and 2005 pertaining to the management of the Accreted Land.

37. In 2010, ten (10) photographs were taken which portray the current state of unchecked overgrowth in the Accreted Land. (Attached as **Exhibit 8-A, 8-B, 8-C, 8-D, 8-E, 8-F, 8-G, 8-H, 8-I and 8-J**). Among the many other concerns enunciated in this Complaint, these photographs clearly show that the unchecked overgrowth has completely obstructed, or imminently will obstruct, all views of the Atlantic Ocean and beach affecting a substantial portion of the residents of Sullivan's Island.

38. By the terms of the contract and/or deed restrictions and/or prior vested property rights, the LOLT and the Town agreed to:

> (a) place restrictions upon the [Accreted Land] for the purposes of, inter alia **retaining land or water areas predominantly in their natural, scenic, open, or wooded condition.**[3]
>
> (b) 'Natural, scientific, educational, aesthetic, scenic and recreational resource' [would] mean **the condition of the [Accreted Land] at the time of this grant, evidenced by**:
>
> a) The appropriate survey maps . . .
>
> b) **An aerial photograph** of the [Accreted Land];

[3] (Page 1 of the contract and/or deed restrictions and/or prior vested property rights, third paragraph) (attached as Exhibit 4) (Emphasis added).

c) **On-site photographs** taken at appropriate locations on the [Accreted Land];

and other documentation . . . **to establish the condition of the [Accreted Land] as of the date hereof** which documentation shall be maintained in duplicate by both the [LOLT] and the [Town] hereof and made available to interested members of the public upon reasonable request for purposes of enforcing the restrictions contained herein. [4]

(c) **these Restrictions may be enforced by the Town, any property owner within the Town, or by any voter registered within the Town**. Such persons may seek any appropriate remedy for any violation, **including**, but not limited to, **injunctive relief** to force a termination of the violation or to permit restoration of the area damaged by [a] prohibited activity.[5]

(d) these Restrictions may be modified or repealed only upon an affirmative vote of **both (a) seventy-five (75%) percent of the registered voters of the Town** who vote in the referendum held pursuant to the terms hereof, **and (b) one hundred (100%) percent of the members of Town Council**. . . These Restrictions shall remain in full force and effect for a period of 50 years.[6]

(e) the [Accreted Land] shall remain in its natural state, [and] **no changes shall be made to its topography or vegetation** . . . [T]he Town Council is given the unrestricted authority to trim and control the growth of vegetation **for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean and providing views of the ocean and beaches to its citizens**.[7]

39. To date, the Town has not conducted a vote or referendum of its registered voters with regard to modifying the contract and/or deed restrictions and/or prior vested property rights and the Town's obligations concerning the Accreted Land. The Town has also not conducted a vote of the Town Council with regard to modifying

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[4] (Page 1 of the contract and/or deed restrictions and/or prior vested property rights, fourth through eighth paragraphs) (attached as Exhibit 4) (Emphasis added).

[5] (Paragraph 5 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4) (Emphasis added).

[6] (Paragraphs 8-9 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4) (Emphasis added).

[7] (Paragraphs 1-2 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4) (Emphasis added).

the contract and/or deed restrictions and/or prior vested property rights concerning the Accreted Land.

40. According to the LOLT's own "Deed Restriction Summary" (attached as Exhibit 4), the first listed "Conservation Value Associated with [the Accreted Land]", and listed as a "Very Significant" priority, is . . . "Scenic Views and Open Space Values." Paragraph 6, Page 2, Exhibit 2.

41. The Accreted Land is intended by Defendants to be subject to specific zoning restrictions and limitations of the Town Code and Ordinances.

42. The zoning ordinances in place at the time of the execution of the contract and/or deed restrictions and/or prior vested property rights permitted Town citizens residing where Plaintiffs currently reside to prune, cut and trim, at any time or times, all varieties of trees and bushes "to a height of no less than three [3] feet, provided that the cumulative effect of the trimming, cutting or pruning shall not be detrimental to the safety, welfare, and health of the people of the Town." §21-39(A)(5), Sullivan's Island Town Code and Ordinances (ratified 1981). (Attached as **Exhibit 9**).

43. The zoning ordinances currently in effect place many limitations regarding vegetation height, vegetation type, and the time of the year allowed for pruning, cutting and trimming, which render the Town in breach of its obligations under the contract and/or deed restrictions and/or prior vested property rights.

44. Upon information and belief and despite the duties and obligations under the contract and/or deed restrictions and/or prior vested property rights, and the provisions of the Town Code in place in February 1991, the Town Council is currently considering an "accreted land management plan" ("ALMP").

45. Several of the alternative proposals the Town Council is currently considering for the ALMP would allow the Town to amend improperly and invalidly the Town Code and further render the Town in breach of its obligations under the contract and/or deed restrictions relating to the Accreted Land.

46. Upon information and belief, among the alternative proposals, the Town Council is considering further restricting property owners of land immediately adjacent to the Accreted Land, including Plaintiffs, from trimming, cutting and pruning the shrubs and trees located in the Accreted Land.

47. On June 15, 2010, the Bluesteins applied with the Town for a permit to cut, trim and prune, at any time or times, to a height of no less than three [3] feet, all variety of shrubs and trees located in the portion of the Accreted Land immediately adjacent to the Bluesteins' lot line towards the ocean, within the extension of the Bluesteins' side lot lines projected towards the ocean. (Attached as **Exhibit 10**). On June 23, 2010, the Albenesiuses applied with the Town for an identical permit. (Attached as **Exhibit 11**)

48. On June 21, 2010, the Town denied the Bluesteins' application. (Attached as **Exhibit 12**). On June 24, 2010, the Town denied the Albenesiuses' application. (Attached as **Exhibit 13**).

49. As was specifically allowed by the ordinance in existence when the contract and/or deed restrictions and/or prior vested property rights were agreed to on February 12, 1991 (See Exhibits 4 and 10), Plaintiffs desire to cut, trim and prune, at any time or times, to a height of no less than three [3] feet all variety of shrubs and trees located in the portion of the Accreted Land immediately adjacent

to the Plaintiffs' lot line towards the ocean, within the extension of the Plaintiffs' side lot lines projected towards the ocean.

50. Plaintiffs' properties are appraised, assessed and classified as "beach front and ocean view" properties according to county tax appraisals and assessments.

51. However, the classification of Plaintiffs' properties as "beach front and ocean view" properties is no longer correct, or is imminently in danger of no longer being correct, because of the Town and Town Council's violation of the contract and/or deed restrictions and/or prior vested property rights.

52. The Plaintiffs' properties have been reduced in fair market value by at least one million ($1,000,000.00) to one million five hundred thousand ($1,500,000.00) Dollars each. (See opinion letter of Thomas F. Hartnett, G.A.A., C.R.B., a South Carolina Certified General Real Estate Appraiser.) (Attached as **Exhibit 14**).

53. On February 3, 2009, consultants hired by the Town Council to implement an "Accreted Land Management Plan" (hereinafter referred to as "ALMP") submitted a proposed questionnaire or "opinion matrix" for the Town Council to initiate a series of community forums to discuss the various advantages and disadvantages of various alternatives for the ALMP.

54. The consultants' own draft questionnaire/opinion matrix included "Ocean Views" and "Property Values" as distinct issues of importance to be considered in any alternative ALMP. (Attached as **Exhibit 15**).

55. An earlier proposed questionnaire/opinion matrix, which was never submitted to the residents of Sullivan's Island, listed "View of the Ocean" as the

first issue to consider when determining how to manage the Accreted Land. (Attached as **Exhibit 16**).

56. However, the Town's final draft of its questionnaire/opinion matrix which was submitted to Town residents in 2009 completely deleted and categorically reduced in importance the issues of "Ocean Views" and "Property Values." (Attached as **Exhibit 17**).

57. On January 20, 2010, Defendants, through the Town Administrator Andy Benke, the Town Mayor Carl Smith, Town of Sullivan's Island Mayor *Pro Tem* Mike Perkis, and Town Council member Patrick M. O'Neil, Ph.D., specifically instructed Timothy W. Kana, Ph.D., President of Coastal Science & Engineering and the consultant hired by the Town to prepare the ALMP, to refrain from considering any correspondence or opinions expressed by any Sullivan's Island residents, property owners and registered voters with regard to the management of the Accreted Land. (See attached **Exhibit 18**)

58. The actions and inactions of the Town and Town Council with regard to the management of the Accreted Land have been, and continue to be, damaging to and in derogation of Plaintiffs' property, contractual and constitutional rights in the following manners:

(a) Eliminating the Plaintiffs' views of the beaches and the Atlantic Ocean;

(b) Diminishing the Plaintiffs' property values;

(c) Diminishing the ocean breezes onto the Plaintiffs' properties;

(d) Increasing the potential of a fire hazard;

(e) Increasing the mosquito population on the Plaintiffs' properties;

(f) Increasing the bug, raccoon, snake, rat, spider, coyote, and varmint populations;[8]

(g) Increasing the quantity of poison ivy in the Accreted Land and on the Plaintiffs' properties;

(h) Increasing the security concerns on Plaintiffs' properties due to the taller trees and shrubs in the Accreted Land which provide increased cover for criminals and dangerous animals/varmints to hide;[9]

Instituting ordinances and plans which constitute an invasion of the rights of "beach front and ocean view" property owners;

(i) Supporting regulations and ordinances which discount the values of "beach front and ocean view" property owners while benefitting from the higher taxes which are based upon the so-called "beach front and ocean view" location.

59. The concerns enunciated in Paragraph 58(a) through 57(j) are or should be a major concern to the Town Council in their function as elected representatives of the taxpayers, residents, property owners and registered voters of Sullivan's Island.

60. The Town Council does not have the power to enact ordinances which affect the Accreted Land in ways other than those allowed by the easements and restrictive covenants clearly stated in the contract and/or deed restrictions and/or prior vested property rights (attached as Exhibit 4) and which deprive Plaintiffs of what they had and/or acquired as owners of so-called "beach front and ocean view" properties.

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[8] Upon information and belief, there have been numerous instances of pets, children and adults being attacked by dangerous animals and varmints in or near the Accreted Land, which can be attributed to the unchecked overgrowth of the Accreted Land and the cover such overgrowth provides to such dangerous animals and varmints.

[9] Upon information and belief, there has been at least one attempted rape, which occurred in the Accreted Land within the past few years which can in part be attributed to the unchecked overgrowth of the Accreted Land and the cover such overgrowth provides to criminals.

61. As is clearly stated in the terms of the contract and/or deed restrictions and/or prior vested property rights and above paragraphs, the Town and LOLT have an affirmative duty to maintain and produce to Plaintiffs all aerial photographs, on-site photographs, survey maps and any other documentation establishing the condition of the Accreted Land as it existed on February 12, 1991. Upon information and belief, the Town has failed to follow this promise, and has neither produced nor maintained these photographs.

62. As a matter of law, Defendants have no right to a jury trial in this matter.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

63. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

64. The Town and Town Council does not have the power to enact any changes to the topography or vegetation of the Accreted Land other than for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean and providing views of the ocean and beaches to its citizens,

65. The Town and Town Council's current regulation of the Accreted Land is unreasonable, arbitrary and capricious, and renders the Town in breach of the contract and/or deed restrictions and/or prior vested property rights.

66. Any zoning classifications or restrictions which disallow Plaintiffs from trimming, cutting or pruning, at any time or times, all varieties of shrubs and trees to a height of no less than three [3] feet above the ground, render the Town in breach of the contract and/or deed restrictions and/or prior vested property rights.

67. The Town's current zoning classifications and restrictions render the Town in violation of the contract and/or deed restrictions and/or prior vested property rights.

68. The Town's violation of the contract and/or deed restrictions and/or prior vested property rights substantially affects the rights of Plaintiffs as to their real property, inhibits the planned and intended use and enjoyment of Plaintiffs' real property, and poses a major financial detriment to Plaintiffs.

69. The clear language of the contract and/or deed restrictions and/or prior vested property rights mandates that the Town and Town Council shall only make changes to the topography or vegetation of the Accreted Land, *as it was on February 12, 1991*, "for the purposes of mosquito control, **scenic enhancement**, public and emergency access to the Atlantic Ocean and providing views of the ocean and beaches to its citizens." (Page 2, Paragraphs 1-2 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4) (Emphasis added).

70. Furthermore, the restrictions contained in the contract and/or deed restrictions and/or prior vested property rights may only be modified or repealed "upon an affirmative vote of both (a) seventy-five (75%) percent of the registered voters of the Town who vote in the referendum . . . and (b) one hundred (100%) percent of the members of Town Council." (Paragraph 8 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4).

71. To date, the Town has not conducted a vote or referendum of its registered voters, nor has it conducted a vote of the Town Council, with regard to

modifying the contract and/or deed restrictions and/or prior vested property rights and the Town's obligations concerning the Accreted Land.

72. The contract and/or deed restrictions and/or prior vested property rights "shall remain in full force and effect for a period of 50 years." (Paragraph 9 of the contract and/or deed restrictions and/or prior vested property rights) (attached as Exhibit 4).

73. The Plaintiffs seek an Order from the Court declaring that the Town and Town Council have violated the terms of the contract and/or deed restrictions and/or prior vested property rights (attached as Exhibit 4) and issue a declaratory judgment invalidating all ordinances relating to the management of the Accreted Land passed since February 12, 1991.

74. The Plaintiffs seek an Order from the Court declaring that any of the Town citizens, including Plaintiffs, who own property adjacent to those portions of the Accreted Land not adjacent to Fort Moultrie or the Sullivan's Island Elementary School, may trim, cut and prune, at any time or times, all variety of trees and shrubs located in the Accreted Land to a height of no less than three feet above the ground.

75. Plaintiffs seek an Order from the Court declaring that, by the terms of the contract and/or deed restrictions and/or prior vested property rights (attached as Exhibit 4), the Town has an affirmative duty to produce to Plaintiffs all aerial photographs, on-site photographs, survey maps and other documentation establishing the condition of the Accreted Land as it existed on February 12, 1991.

FOR A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunctive Relief)

76. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

77. The Town and Town Council's violation of the contract and/or deed restrictions and/or prior vested property rights has caused Plaintiffs undue hardship and substantial costs.

78. Plaintiffs' real property has been adversely affected in the ways enumerated in Paragraph 58.

79. Plaintiffs believe immediate action is necessary to save the undue hardship and costs of enforcement of the contract and/or deed restrictions and/or prior vested property rights (attached as Exhibit 4).

80. Plaintiffs seek a temporary and permanent injunction against the Town Council prohibiting it from further rendering the Town in breach of the contract and/or deed restrictions and/or prior vested property rights.

81. To the extent of their authority, the Town and Town Council should be restrained from accepting taxes based upon a so-called "beach front and ocean view" location so long as the Town and Town Council continue to frustrate, block, reduce and/or eliminate "beach front and ocean view" properties as such.

82. Plaintiffs seek a temporary and permanent injunction against the Town Council ordering the Town and Town Council to refrain from interfering with Plaintiffs' right to trim and prune, at any time or times, all variety of shrubs and trees in the Accreted Land to a height of no less than three feet above the ground.

FOR A THIRD CAUSE OF ACTION
(Writ of Mandamus)

83. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

84. As previously described above, Plaintiffs have contractual, property and constitutional rights for which Defendants have a clear duty of performance to abide by the easements and restrictive covenants of the contract and/or deed restrictions (attached as Exhibit 4), thereby allowing Plaintiffs to enforce their rights with regard to those portions of the Accreted Land adjacent to their properties.

85. As a matter of law, Defendants' actions and inactions, with regard to those portions of the Accreted Land immediately adjacent to Plaintiffs' properties, are ministerial acts.

86. Plaintiffs have a specific legal right – enforcing the contract and/or deed restrictions and/or prior vested property rights (attached as Exhibit 4) – for which discharge of Defendants' duty to allow Plaintiffs' applications to cut, trim and prune is necessary.

87. Town officials are bound to follow the terms of the contract, and Plaintiffs seek to enforce and established rights in that document.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

88. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

89. Plaintiffs are intended beneficiaries of the contract between the Lowcountry Land Trust and the Town.

90. The Town has failed and refused, and continues to fail and refuse, to perform or tender its performance as required by the contract and deed restrictions

by failing to trim the vegetation in the Accreted Land and prohibiting Plaintiffs from trimming those portions of the Accreted Land adjacent to their properties.

91. The failure and refusal of the Town to perform its obligations under the contract has damaged Plaintiffs in the aforementioned manners reiterated in Paragraph 58.

92. Plaintiffs are entitled to actual damages, reasonable attorneys' fees, legal fees, and such other and further relief as the court may deem just and proper.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract with a Fraudulent Act)

93. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

94. On February 12, 1991, in consideration of ten ($10.00) Dollars, the LOLT offered and the Town accepted a contract subject to certain easements and restrictions, conveying the Accreted Land to the Town.

95. Defendants breached, or in the alternative have unjustifiably failed to perform, the contract dated February 12, 1991 between the LOLT and the Town, by, among other acts and omissions, failing to enforce restrictions upon the Accreted Land to retain the land in its natural, scenic, open and wooded condition.

96. Plaintiffs have suffered damages as a direct and proximate result of the breach of, or unjustifiable failure to perform, the contract dated February 12, 1991, in manners enumerated in Paragraph 58.

97. As previously discussed, on February 3, 2009, consultants hired by the Town Council, at a cost to taxpayers in the hundreds of thousands of dollars, to implement an ALMP submitted a proposed questionnaire or "opinion matrix" for the Town Council to initiate a series of community forums to discuss the various

advantages and disadvantages of various alternatives for the ALMP and to gauge the opinions of its citizens as to what they considered to be issues of importance.

98. The consultants' own draft questionnaire/opinion matrix included "Ocean Views" and "Property Values" as distinct issues of importance to be considered in any alternative ALMP. (Attached as Exhibit 15). In fact, "View of the Ocean" was the first issue listed for consideration when determining how to manage the Accreted Land. (Attached as Exhibit 16).

99. However, the questionnaire/opinion matrix that the Town actually submitted to the community at large and the public was not the version that its own consultants recommended to be submitted.

100. According to a series of emails dated April 22, 2009, there was debate among members of Town Council about whether or not to alter the ALMP as drafted by the Town's own consultants. Council members discussed the trouble that could arise from "monkeying" with the report. (Attached as **Exhibit 19)**

101. In the final draft in 2009, one or more person(s) acting for or on behalf of the Defendants submitted to Town residents a questionnaire/opinion matrix that completely deleted and categorically reduced in importance the issues of "Ocean Views" and "Property Values." (Attached as Exhibit 17).

102. On January 20, 2010, Defendants, through the Town Administrator Andy Benke, the Town Mayor Carl Smith, Town of Sullivan's Island Mayor *Pro Tem* Mike Perkis, and Town Council member Patrick M. O'Neil, Ph.D., specifically instructed Timothy W. Kana, Ph.D., President of Coastal Science & Engineering and a consultant hired by the Town to prepare a plan for the management of the Accreted Land, to refrain from considering any correspondence or opinions

expressed by any Sullivan's Island residents, property owners and registered voters with regard to the management of the Accreted Land. (See attached Exhibit 18).

103. The above-described acts represent fraudulent intent specifically related to the breaching of the contract.

104. Defendants have, upon information and belief, made false representations as to the circumstances related to the breaching of the contract as described above.

105. The fraudulent acts described above were made, upon information and belief, based on Defendants' dishonesty in fact, unfair dealing and/or unlawful appropriation of Plaintiffs' property and property rights by design.

106. The purposeful alterations of the work performed by the consultants Defendants themselves had hired, was performed, upon information and belief, in order to diminish the importance of property values, scenic views and breezes to Town residents and property owner, all to the direct and proximate detriment of Plaintiffs.

107. Plaintiffs are entitled to such additional consequential, actual and/or punitive damages as the Court may see fit for the independent tortious wrong associated with the breach of the contract.

FOR A SIXTH CAUSE OF ACTION
(Unfair Trade Practices Act)

108. Plaintiffs repeat and re-allege all of the foregoing paragraphs as fully repeated and restated.

109. Defendants' conduct, as described above, is unfair, deceptive, offensive to the public policy, immoral, unethical and/or oppressive.

110. Defendants have violated S.C. Code Ann. § 39-5-140. Defendants' acts have substantially interfered with the real estate trade or industry by significantly diminishing the property values of homeowners who have lost their classification of "breach-front" property because of Defendants' bad faith refusal to trim or let Plaintiffs trim sections of the Accreted Land adjacent to their properties.

111. Defendants have directly harmed not only Plaintiffs, but also Charleston County, by failing to maintain, and prohibiting Plaintiffs from maintaining, their ocean views due to the diminution in property values and the resulting decrease in taxes collected as a direct result of the diminution of properties assessed and classified as "ocean front."

112. Defendants' unfair and deceptive trade practices have damaged Plaintiffs and those similarly situated.

113. Defendants' unfair and deceptive trade practices are having an adverse impact on the public interest, in the use and enjoyment of not only Plaintiffs, but also all residents of Sullivan's Island.

114. Plaintiffs are entitled to actual damages, treble damages and attorneys' fees.

FOR A SEVENTH AND/OR FIRST ALTERNATIVE CAUSE OF ACTION
(Public and/or Private Nuisance)

115. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

116. The unchecked overgrowth of vegetation in the Accreted Land, adjacent to Plaintiffs' properties has led to a succession of serious and special public and private harms to Plaintiffs' properties, including but not limited to, the owners' inability to reasonably use their own properties for normal and conventional uses.

117. Specifically, Plaintiffs have suffered unreasonable interference with the use and enjoyment of their properties. The vast unchecked vegetation, coupled with the Town's deliberate and intentional failure to grant their respective applications to cut, trim and prune, to a height of no less than three feet, vegetation located on the Accreted Land directly adjacent to their properties, has led to an inability to use their properties as they are entitled to use them.

118. The unchecked vegetation has led to serious public and private concerns of safety, including the ability of unwanted other persons and dangerous animals and varmints to hide in the Accreted Land and pose potential grievous harm to their very safety and use of their own property, all of which is proximately caused by the wrongful interference of Defendants with Plaintiffs' private property rights.

119. The injuries described herein are explicitly different in kind, and not merely in degree, from those suffered by the general public, and the injuries materially impair Plaintiffs' access to the Atlantic Ocean.

120. The impacted Accreted Land has become a "breeding ground" for an enormous and highly undesirable increase in the bug, raccoon, snake, rat, spider and other wildlife and varmint populations and other unwanted and dangerous animals hiding in the Accreted Land, which has caused and continues to cause actual, potential and foreseeable harm to Plaintiffs' properties.

121. This issue is of very significant public and private importance so as to require its resolution for future guidance.

122. Plaintiffs ask that the Court direct that the Town abate the nuisance or give Plaintiffs the authority to abate the nuisance.

FOR AN EIGHTH AND/OR SECOND ALTERNATIVE CAUSE OF ACTION
(Inverse Condemnation)

123. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

124. By a series of affirmative, overt and positive conduct, Defendants have embarked on a course of action, including denying Plaintiffs' requests to cut, trim and prune, which has resulted in the wrongful taking of the affected areas contrary to Plaintiffs' property, contractual and constitutional rights. Defendants' wrongful taking of Plaintiffs' properties has caused harm to Plaintiffs and their rights with regard to an area that is now dedicated to public use.

125. The character of the governmental action, and the severe economic impact of these overt actions and threatened future actions have unreasonably and wrongfully interfered with Plaintiffs' distinct "investment-backed" expectations, including Defendants' insistence (to the extent of their authority) to continue to assess and tax Plaintiffs' properties as "beach front and ocean view" properties when they are no longer actually entitled to that label.

126. The governmental action described herein has resulted in the wrongful taking of private property without adequate consideration for public use, and Plaintiffs are informed and believe they are entitled to now bring an action for inverse condemnation to seek reimbursement for damages resulting from Defendants' wrongful acts, including but not limited to compensation for the significant diminution in value of their respective properties, reasonable costs and expenses, reasonable attorneys' fees incurred in pursuing this matter, and appraisal and engineering fees incurred as a result of pursuing this action.

FOR A NINTH AND/OR THIRD ALTERNATIVE CAUSE OF ACTION
(Violation of the Contract Clauses of the S.C. and U.S. Constitutions)

127. Plaintiffs repeat and re-allege all of the foregoing paragraphs as if fully repeated and restated.

128. Acting under the guise of its legislative and executive powers, Defendants enacted, and have since enforced, ordinances in 1995 and 2005 pertaining to the management of the Accreted Land.

129. The 1995 and 2005 changes in the law pertaining to the management of the Accreted Land directly impair the pre-existing contractual relationship between Defendants and Plaintiffs by materially altering the reasonable expectations of the contracting parties and/or attempting to make material alterations in the character or the legal effect of the existing contract.

130. The 1995 and 2005 changes in the law pertaining to the management of the Accreted Land were not enacted to curtail a pressing emergency justifying the impairment of the pre-existing contractual relationship between Defendants and Plaintiffs.

131. The 1995 and 2005 changes in the law pertaining to the management of the Accreted Land are not narrowly tailored to any pressing emergency at hand and are not reasonable.

132. The impairment of the contractual relationship between Defendants and Plaintiffs is substantial. Due to Defendants' actions and inactions pertaining to their obligations under the contract and/or deed restrictions and/or prior vested

property rights at issue in this case, Plaintiffs' real property has been adversely affected in the ways enumerated in Paragraph 58.

133. The 1995 and 2005 changes in the law pertaining to the management of the Accreted Land are unconstitutional.

WHEREFORE, Plaintiffs ask this Court for relief as follows:

(a) Reasonable costs, disbursements and expenses, including attorneys' fees, appraisal and engineering fees, actually incurred on behalf of this proceeding;

(b) That the Town and Town Council be enjoined and restrained from interfering with the rights of the citizens of Sullivan's Island who own property immediately adjacent to the Accreted Land, including Plaintiffs, to cut, trim and prune, at any time or times, all variety of shrubs and trees in the Accreted Land to a height of no less than three (3) feet above the ground;

(c) That this Court invalidate the 1995 and 2005 Town ordinances which limit what can be cut, trimmed or pruned, so as to put back in place the ordinance (Exhibit 9) that was applicable to the Accreted Land when it was conveyed by the LOLT to the Town of Sullivan's Island, whereby the parties agreed to maintain the Accreted Land as it was as of February 12, 1991;

(d) Actual and compensatory damages in an amount to be made more definite and certain by the time of trial; and

(e) For any and all other relief, whether in law or in equity, as this Court deems just and equitable.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood

Robert H. Hood, Sr. (SC# 2599)
S. Scott Bluestein (SC# 65103)
Michael J. Brickman (SC# 874)
Molly H. Craig (SC# 6960)
Robert H. Hood, Jr. (SC# 13491)
James B. Hood (SC# 70212)
Barry Krell (SC# 3573)
Jonathan F. Krell (SC# 16691)
Robert T. Lyles, Jr. (SC# 10299)
Alice F. Paylor (SC# 4380)
Stephen A. Spitz (SC # 5287)

Attorneys for Plaintiffs, Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius

December 10, 2013
Charleston, South Carolina

Map of Sullivan's Island Properties and Endorsers

EXHIBIT 1

Summary of Deed Restriction

Sullivan's Island Beach

100+ acres, Sullivan's Island, SC

Town of Sullivan's Island
CAWS Focus Area, Sea Islands Initiative
Charleston County, South Carolina

Signed February 12, 1991
Recorded February 14, 1991

Ownership Information:
The accreted beach from the parcel boundaries of beachfront property owners to the mean high water mark of the Atlantic Ocean is owned by the Town of Sullivan's Island. It was estimated at the time of the deed restriction that the accreted beach consisted of approximately 100 acres. The protected property extends from Porpoise Point at the Star of the West Road to just before Breach Inlet, excluding parcels previously conveyed by the Township Commissioners, Town Council of Sullivan's Island, the State of SC or their predecessors in title. The Town also set aside 6 lots in front of the Coast Guard Station/Ft Moultrie in order to raise funds in the future or for emergency. The property from Station 32 to Breach Inlet was excluded due to its transitory nature and inability to establish accurate property lines with any consistency.

History of Transaction:
Beginning in the mid 1980's the Town of Sullivan's Island and its residents began expressing concern about the future of the accreted beach on Sullivan's Island. A 40-year study by the South Carolina Coastal Council showed an annual accretion rate ranging from one foot of erosion to 17.3 feet of accretion. Since these figures reflected one of the strongest accretion rates in the state, it was considered probable that the accreted beach would exist into the future. Therefore, something should be done to protect it before it became a target for developers. The land was estimated to be valued at about $50 million based on then current lot prices and 1/2 – acre lot size under current zoning.

A deed restriction was chosen over a conservation easement primarily due to the partial interest issue. With an easement donation, LOLT would retain partial interest in the property and the Town attorneys were concerned about the Town's authority to grant partial interest in public property. Since tax benefits would not be an advantage in this case, the deed restriction option was felt to be the more appropriate course of action. The proposal was to sell the property to LOLT, who would place restrictions in the deed upon transfer back to the Town of Sullivan's Island, while retaining 3rd party enforcement rights. A transfer of ownership was necessary to ensure enforceability of the restrictions and prevent a future Town Council with different motivations from changing or weakening the restrictions or doing away with them all together.

EXHIBIT 2

In April 1989, in anticipation of the transaction and at the recommendation of the Town Attorney, Lawrence A. Dodds, Jr., the land was divided into 11 parcels by the Sullivan's Island Real Estate Committee. It was believed that accurate parcel boundaries needed to be established prior to transfer.

It was decided that the Town would raise $10,000 for LOLT to purchase the land from the Town before transferring it back with restrictions. Attorneys advised that for the restrictions to be enforceable there must be "significant "consideration for the sale and statute requires fair consideration in public transactions. After the sale, the funds would be placed into a stewardship fund by Town Council to provide for future monitoring and legal enforcement expenses for the protected property. The funds could also possibly to be used to improve beach access to the public. Real estate broker and island resident Edward Presson led fundraising efforts and, after one solicitation mailing, collected $16,945.

Much progress was made, and the Town was ready to move forward in late Summer of 1989. However, hurricane Hugo hit on September 21, 1989 and devastated the island and its residents. The project was put on hold and resumed the following summer.

The Town ordinance authorizing the transaction required a minimum of 3 readings and ratification by Town Council. The readings were completed in December 1990 and Town Council gave final approval in December as well (Town Ordinance Section 4-4.3). The transfer took place and was recorded in February 1991. The new restrictions remain in place for 50 years and will be automatically renewed for additional periods of 50 years until the restrictions are repealed by 75% vote of registered island voters AND unanimous approval of Town Council.

Easement Design Information:

The primary design elements revolved around maintaining the natural character of the property and protecting the accreted beach from future development and commercialization The accreted beach also serves as a protective barrier from high tides associated with coastal storms and hurricanes. The restrictions also needed to allow for public enjoyment to ensure public support of the project. There was also a need to reserve the area for emergency use when necessary. The accreted beach was already protected by a wilderness protection ordinance but stronger protection was preferable to an ordinance that could be repealed by a simple majority vote of the council.

Town Administrator: David Reese
Town Attorney: Lawrence A. Dodds, Jr.
Town Planning Commission: Susan M Smythe, Chairperson
Sullivan's Island Real Estate Committee: Marshall Stith, Chairman
Sullivan's Island Mayor: Melvin Anderegg

LOLT Board President: Louise Maybank (1988-1989), Antony M. Merck (1990-1991)
LOLT Executive Director: Elizabeth Hagood

Conservation Values Associated with Protected Property:

Scenic Views and Open Space Values **Very Significant**

The scenic value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the entire property. These conservation values are protected by the limitations on subdivision, building and commercial use.

Wildlife Habitat Values **Very Significant**

The property consists of vegetated dunes, wetlands and white sand beaches which provide habitat and nesting grounds to a variety of birds and animals, including ground doves, painted buntings and loggerhead sea turtles. These conservation values will be protected by limitation on subdivision, building, and commercial use, as well as the limited ability to alter vegetation.

Water Quality Values **Significant**

The water quality values derive from the wetlands, existing vegetation and a lack of impervious surface on the property. These conservation values are preserved by the prohibition on impervious surface and roofed buildings which increase runoff and non-point source pollution. The limited ability to alter vegetation protects the existing vegetation and provides natural filtration of pollutants. The accreted beach will continue to serve as a buffer along the Atlantic Ocean.

Summary of Restrictions and Allowed Uses:

This summary is for informational purposes. For direct interpretation, refer to the terms of the Deed Restriction.

Prohibits:

- Buildings or structures with a roof
- Asphalt or concrete pavement or any non-porous paving
- Electrical power lines, wires, conduits, stations or pads*
- Sewer lines, pipes or lift stations*
- Water lines, pipes or lift stations*
- Commercial activities in any way related to the buying and selling of things, goods or services

*Utility easements can be granted across property provided no services are provided to any improvements on property

Town council can approve or conduct minor modifications or improvements that serve overall public good for the purposes of:

- Drainage
- Mosquito control
- Public walkways and emergency access
- Beach renourishment
- Erosion control
- Vegetation management
- Educational programs
- Public safety
- Public health
- Scenic enhancement

Any action taken must be for one of the above reasons and must show that the benefits of the action outweigh any damage to the conservation values of the property in its natural state

Cumulative effects of proposed and past actions, alternative methods, and probable results of not taking proposed action must be considered

Future Board Obligations:

- Third party enforcement rights

Property Contact Information

As of July 2003
date

Property Name: *Sullivan's Island Beach*

Landowner *Town of Sullivan's Island*

Contact Name: *Town Administrator - Andy Benke (as of 7-2003)*

Phone #: *883-3198 or 224-9270*

Contact Address: *P.O. Box 427*

Sullivan's Island, SC 29482

Information on accessing property (gates, keys, dogs, etc.):
Public beach, multiple access points

Attorney: **Should Attorney be notified of site visits?**

Firm:

Address: **Phone #:**

Caretaker: **Phone #:**

Address:

Forester: **Phone #**

Address:

Any other person involved in activities on property:

Individuals who may want notice of Land Trust activities:

Is property leased for hunting?
No

When is the best time to visit the property?
Good weather

Any other information that someone should know before visiting the property?
Please contact Town Administrator, would like to walk property with someone from the Land Trust to explain what you look for.

BK K 200PG484

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

WHEREAS, the Town of Sullivan's Island is the owner in fee simple of certain real property, which has aesthetic, scientific, educational, and ecological value in its present state as a natural area, which has not been subject to development or exploitation, which property is described more specifically on Exhibit A attached hereto and incorporated herein by reference thereto.

WHEREAS, the Town of Sullivan's Island desires to convey said property to the Lowcountry Open Land Trust, which is a non-profit corporation whose purpose is to preserve and conserve natural areas.

WHEREAS, the Town Council and the Town of Sullivan's Island, in meetings duly assembled, enacted an Ordinance, ratified on the 15th day of January, 1991, which authorized the Town of Sullivan's Island to convey to the Lowcountry Open Land Trust the below described property and, further authorized and directed the Mayor and the Town Clerk to so execute the Deed of Conveyance on behalf of the Town Council and the Town of Sullivan's Island.

NOW KNOW ALL MEN BY THESE PRESENTS that the Town of Sullivan's Island in consideration of Ten and 00/100 ($10.00) Dollars, and other valuable consideration to it in hand paid at and before the sealing of these presents by the Lowcountry Open Land Trust in the County and State aforesaid, the receipt whereof is hereby acknowledged have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said Lowcountry Open Land Trust, its successors and assigns, the following described property:

FOR DESCRIPTION OF PROPERTY SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

Together with all and singular the rights, members, hereditaments, and appurtenances to the said Premises belonging, or in anywise, incident, or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Lowcountry Open Land Trust, its successors and assigns, forever.

EXHIBIT 3

BK K 200PG485

WITNESS Its hand and seal this 12 day of February in the year of our lord one thousand nine hundred and ninety-one, and in the two hundred and fifteenth year of the sovereignty and independence of the United States of America.

In the Presence of

David P. Reen, Jr.

TOWN OF SULLIVAN'S ISLAND

By: C. Melvin Anderegg
C. Melvin Anderegg, Mayor

Attest: Carolyn R. Kruger
Carolyn R. Kruger, Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness and made oath that he/she saw the within named Town of Sullivan's Island by C. Melvin Anderegg, Mayor, and the Attested to by Carolyn R. Kruger, Clerk, sign, seal, and as the act and deed of the Town of Sullivan's Island and of the said Council deliver the foregoing written deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this 12 day of February, 1991.

David P. Reen

Notary Public for South Carolina
My Commission Expires: 4-2-96

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY STAMP TAX
FEB 1990
FEB. 1997
$ 37.40

EXHIBIT A

All those lots, parcels and pieces of property located within the Town of Sullivan's Island, County of Charleston, State of South Carolina, being more specifically described as follows:

Parcel 1

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Star of the West Street, Middle Street, Station 12 Street, and the mean high water mark of the waters of the Atlantic Ocean and Charleston harbor. Said property is also shown as Parcel #1 on the below described plat attached hereto and marked Exhibit B.
TMS: 523-06-00-073

Parcel 2

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Palmetto Street, Poe Avenue, Station 16 Street, and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #2 on the below described plat attached hereto and marked Exhibit B.

SPECIFICALLY SAVING AND EXCEPTING all that land now owned by the United States Government.

SPECIFICALLY SAVING AND EXCEPTING all those lots, parcels and pieces of land know as Tract A and Tract B on a plat by William Porcher, dated April 21, 1989, entitled "Plat Showing Battery Logan Owned by Sullivan's Island Board of Township Commissioners, Being Subdivided into Tract A and Tract B, Sullivan's Island, Charleston County, South Carolina" being duly recorded in the R.M.C. Office for Charleston County on the 24th day of May, 1989, in Plat Book BW, at Page 28.
TMS: 523-07-00-124

Parcel 3

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 16 Street, Atlantic Avenue, Station 18 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #3 on the below described plat attached hereto and marked Exhibit B.
TMS: 523-12-00-077

Parcel 4

All that real property not previously conveyed by the Board of

Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 18 Street, I'on Street, Station 18-1/2 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #4 on the below described plat attached hereto and marked Exhibit B.

SPECIFICALLY SAVING AND EXCEPTING Lots M, N, M2, N2, and property presently owned by the United States Coast Guard, along with West Atlantic Avenue as shown on plat entitled "Town of Sullivan's Island, Charleston County, South Carolina", dated May 18, 1964, attached hereto and incorporated herein as Exhibit B.

TMS: 529-09-00-112

Parcel 5

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 18-1/2 Street, Thee Street, the western boundary of the lands now leased by Charleston County School District No. 2 and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #5 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 6

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated seaward beyond the boundaries of all that real property leased under School District No. 2 of Charleston County, State of South Carolina as more specifically shown by Grant of Lease dated the 23rd day of April, 1954, and recorded in the R.M.C. Office for Charleston County in Book N58, at Page 150. Said property is also shown as Parcel #6 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 7

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by the eastern boundaries of the lands now leased by Charleston County School District No. 2, Pettigrew Street, Station 22 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #7 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 8

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 22 Street, East Atlantic Avenue and Station 22-1/2 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #8 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 9

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 22-1/2 Street, Bayonne Street, Station 28 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #9 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-10-00-087

Parcel 10

All that real property not previously conveyed by the Board of Township Commissions, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 28 Street, Marshall Boulevard, Station 32 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as parcel #10 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-11-00-109

Parcel 11

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated and lying seaward of those lots known and described as Lots 1 through 5, Block 16 and Lots 1 through 7, Block 17, as more specifically shown on the below described plat which is marked Exhibit B. Said property is also shown as Parcel #11 on the below described plat attached hereto and marked Exhibit B.

The above tracts of land are more specifically shown and delineated as the colored portion of a plat entitled "Sullivan's Island, Charleston County, South Carolina", dated May 18, 1964, which is attached hereto and incorporated herein by reference and marked Exhibit B.

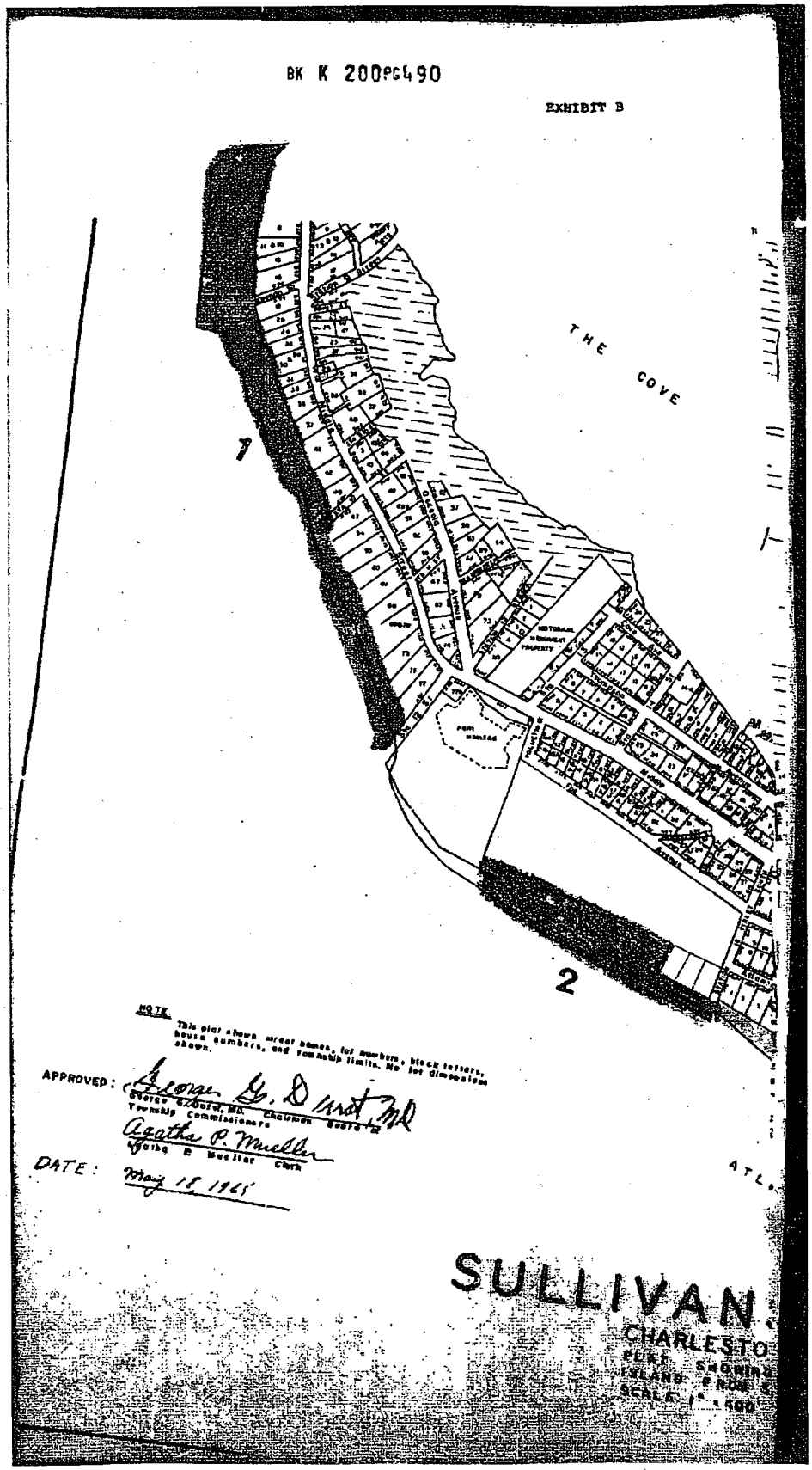
TMS: 529-12-00-116

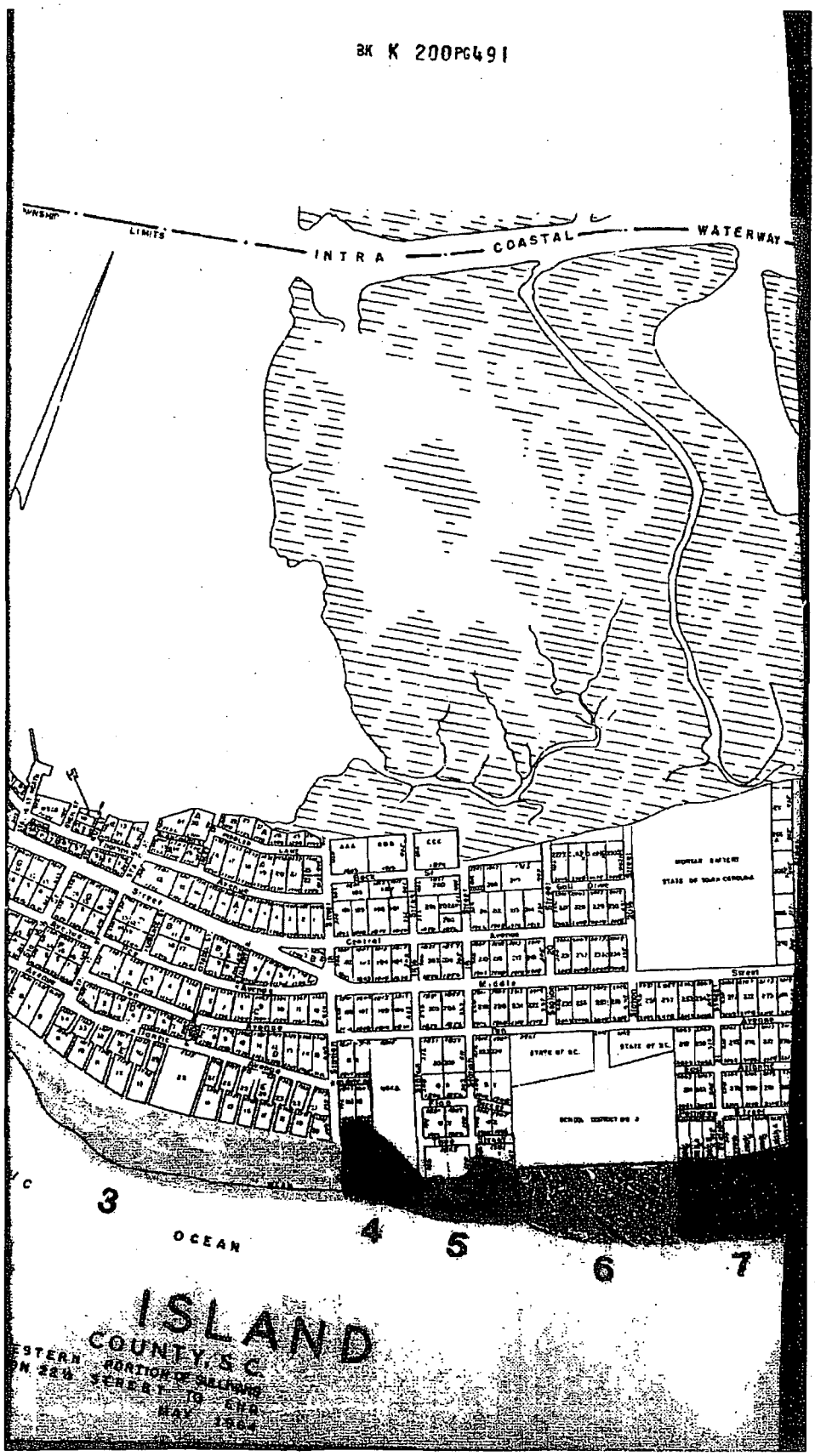
Being a portion of the same property by which the Grantor was given the right to sell and dispose in fee by Act Number 420 of the Acts of the Legislatures for 1953 and, also, a portion of the same property conveyed to the Grantor herein by the War Assets Administration of the United States by Deed dated December 28, 1949, and recorded in the RMC Office for Charleston County in Book K51, at Page 271-286.

Grantees address: P. O. Box 427
1610 Middle Street
Sullivan's Island, SC
29482

BK K 200PG490

EXHIBIT B

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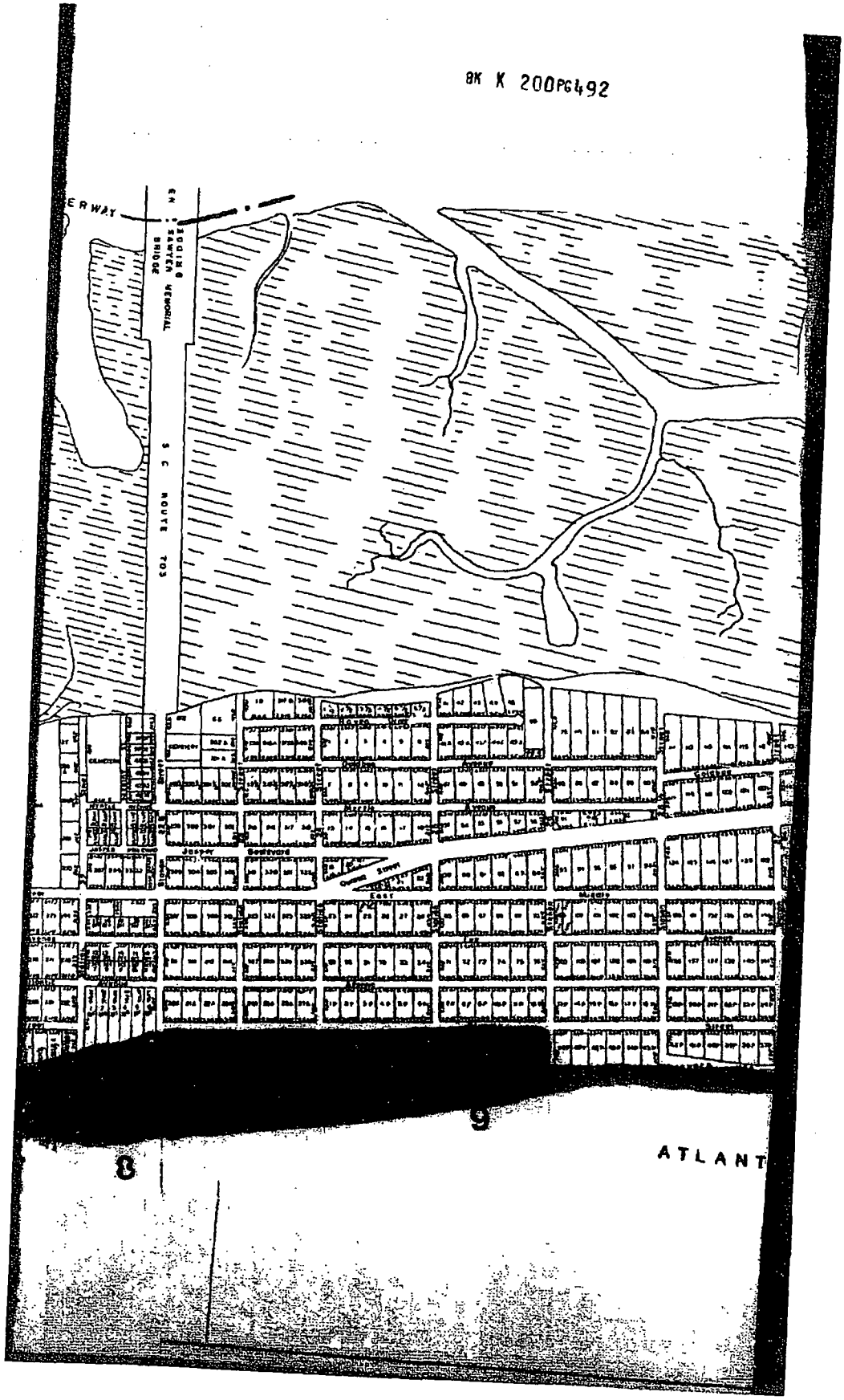
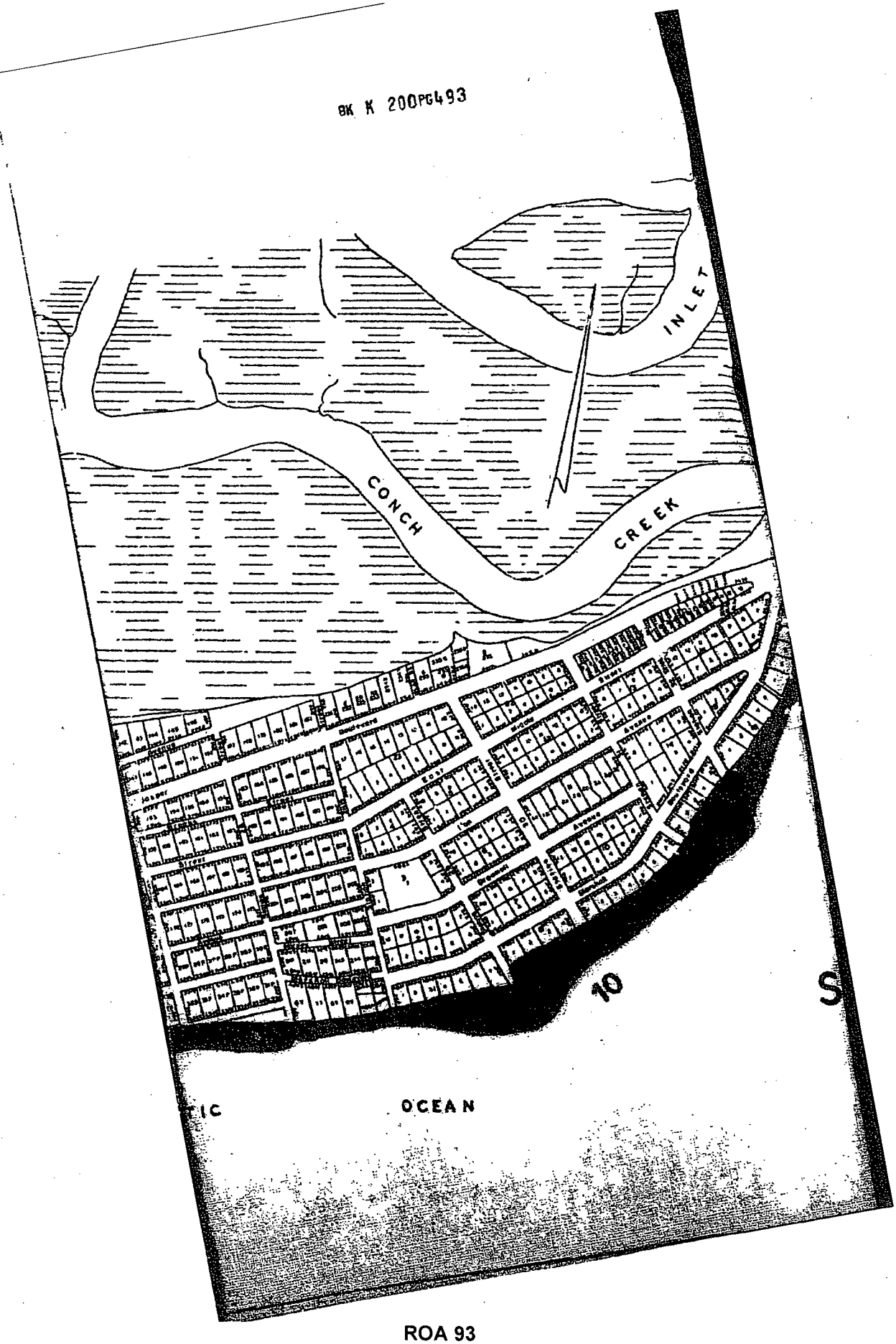
COUNTY, S.C.
MAY 1964

BK K 200PG492

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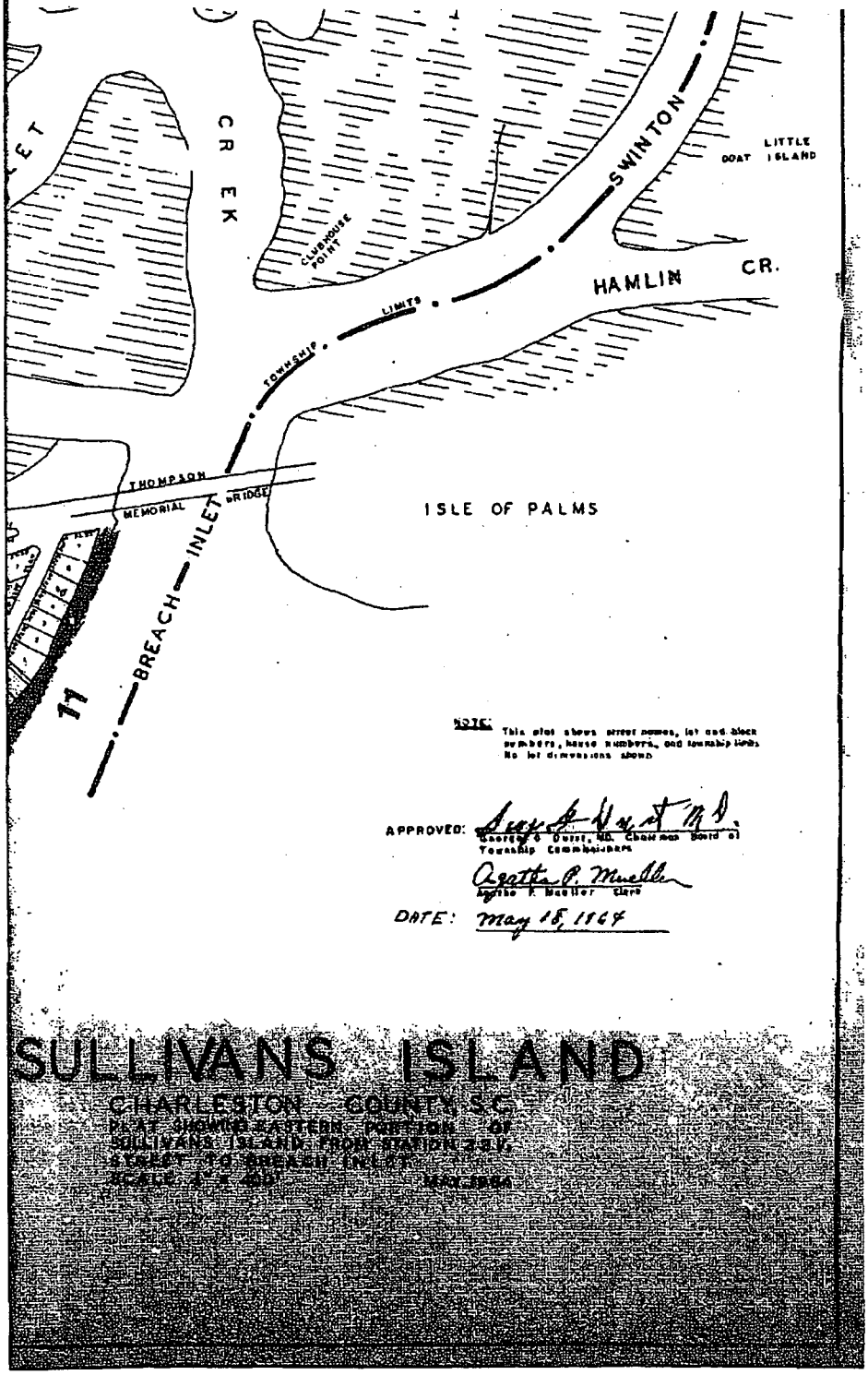

BK K 200PG495

[illegible]
ATTORNEYS AT LAW

FILED
K200-484
91 FEB 14 AM 9:49

ROBERT N. KING
REGISTER
CHARLESTON COUNTY SC

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DMC Lea
DTE 2-19-91

17.00
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18.70
73.10
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Recorded this 14 day of Feb 19 91
On Property Record Card

Pauline S. Koger

Auditor Charleston County

CHARLESTON COUNTY SOUTH CAROLINA DOCUMENTARY TAX
FEB 1991
$ 18.70

BK K 200PG496

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

WHEREAS, the Lowcountry Open Land Trust (the "Grantor") is a nonprofit corporation whose purpose is to preserve and conserve natural areas; and

WHEREAS, the Grantor is the owner in fee simple of certain real property (hereinafter referred to as the "Property" which has aesthetic, scientific, educational, and ecological value in its present state as a natural area which has not been subject to development or exploitation, which property is described more on the attached Exhibit A;

WHEREAS, the parties desire to place restrictions upon the Property for the purposes of, inter alia retaining land or water areas predominantly in their natural, scenic, open or wooded condition or as suitable habitat for fish, plants, or wildlife; and

WHEREAS, "natural, scientific, educational, aesthetic, scenic and recreational resource," as used herein shall, without limiting the generality of the terms, mean the condition of the Property at the time of this grant, evidenced by:

A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

B) An aerial photograph of the Property at an appropriate scale taken as close as possible to the date hereof; and

C) On-site photographs taken at appropriate locations on the Property;

and other documentation, which documentation shall be sufficient to establish the condition of the Property asof the date hereof which documentation shall be maintained in duplicate by both the Grantor and the Grantee hereof and made available to interested members of the public upon reasonable request for purposes of enforcing the restrictions contained herein.

KNOW ALL MEN BY THESE PRESENTS THAT the Lowcountry Open land Trust, a non-profit corporation, organized and existing under the laws of the State of South Carolina (the "Grantor"), in the state aforesaid in consideration of the sum of Ten and 00/100 ($10.00) Dollars, and other valuable consideration, to it in hand paid at and before the sealing of these presents by the Town of Sullivan's Island, South Carolina (the "Town"/"Grantee"), in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said the Town of Sullivan's Island, South Carolina, its successors and assigns, the following described property:

EXHIBIT
4

FOR DESCRIPTION OF PROPERTY SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE (THE "PROPERTY").

This conveyance is made subject to the following terms, conditions, restrictions, and covenants (hereinafter the "Restrictions"):

1. Except as otherwise provided or permitted in Paragraphs 2 and 3 hereof, the Property shall remain in its natural state, no changes shall be made to its topography or vegetation and no structures or improvements shall be erected on the Property.

2. Notwithstanding the provisions of Paragraphs 1 and 3 and subject to the limitations of Paragraph 4, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for the purposes of mosquito control, scenic enhancement, public and emergency access to the Atlantic Ocean and providing views of the ocean and beaches to its citizens.

3. Notwithstanding the provisions of Paragraph 1 hereof, and subject to the limitations of this Paragraph 3 and of Paragraphs 2 and 4, the Town Council of Sullivan's Island (the "Council") shall have the right to improve, change, modify or alter the Property only if such actions are to further or effect one or more of the following enumerated public objectives or policies ("Public Policies"):

a) Drainage
b) Mosquito control
c) Public walkways and emergency access to the Atlantic Ocean
d) Beach renourishment
e) Erosion control
f) Vegetation management
g) Educational programs
h) Public safety
i) Public health; and
j) Scenic enhancement.

Prior to taking any action affecting the Property to further or effect a Public Policy ("Public Action"), the Council shall make specific written findings of fact;

1) that the proposed Public Action is proposed solely for the purpose of furthering or effecting one or more of the enumerated Public Policies,

2) that the proposed Public Action is necessary for the health, safety or general welfare of the Town,

3) that the benefits of the proposed Public Action outweigh the damage done to the aesthetic, ecological, scientific, or educational value of the Property in its natural state, and

4) that in making its findings of fact, the Council has given due and reasonable consideration to

i) the cumulative effect of the proposed Public Action and past Public Actions on the natural state of the Property,

ii) the alternative methods, if any, of furthering or effecting the proposed Public Policy which do not impact adversely on the natural state of the Property, and

iii) the probable results of not taking the proposed Public Action.

The above described written findings of fact must be made prior to each individual Public Action relating to the Property and shall be specific to the circumstances of the proposed Public Action and not merely conclusive in nature. In no event shall any Public Action violate the provisions of Paragraph 4 hereof.

4. In all events, the following activities, improvements and structures shall be prohibited on the Property:

a) any building or structure with a roof

b) Asphalt pavement, concrete pavement or pavement of a non-porous material

c) electrical power lines, wires, conduit, stations or pads

d) sewer lines, pipes or lift stations

e) water lines, pipes or lift stations

f) commercial activities in any way related to the buying or selling of things, goods or services.

Notwithstanding the provisions of Paragraph 4(c), (d) and (e) the Council may allow utility easements for electrical, sewer and water lines to cross through the Property, provided no utility services are provided as a result to any improvements on the Property.

5. These Restrictions may be enforced by the Town, any property owner within the Town, or by any voter registered within the Town. Such persons may seek any appropriate remedy for any violation, including, but not limited to, injunctive relief to force a termination of the violation or to permit restoration of the area damaged by an prohibited activity. The forbearance to

enforce the terms and provisions thereof in the event of a breach shall not be deemed a waiver of any rights granted hereunder. The Town shall not be liable to any person for any violation of these Restrictions by any person other than itself.

6. During the term of these restrictions, the Town shall cause to remain in effect an ordinance of the Town making it a violation of law for any person to violate the provisions of these Restrictions, as such Restrictions may be modified pursuant to Paragraph 8 hereof. The Town may enact ordinances and regulations affecting the Property which are more restrictive than these Restrictions or which are not inconsistent with these Restrictions.

7. If any provision of these Restrictions shall be invalid or for any reason become unenforceable, no other provision shall thereby be affected or impaired.

8. These Restrictions may be modified or repealed only upon an affirmative vote of both (a) seventy-five (75%) percent of the registered voters of the Town who vote in the referendum held pursuant to the terms hereof, and (b) one hundred (100%) percent of the members of Town Council. For purposes of these Restrictions, a registered voter in the Town shall mean any voter eligible to vote in Town elections who is registered 30 days prior to the referendum held pursuant to the terms hereof. At least 45 days prior to any referendum held pursuant to the terms hereof, the Council shall adapt reasonable regulations concerning the manner of voting hereunder. Nothing herein shall prohibit the Council from adopting regulations which allow voting by ballot on a designated day or days or by circulation of written petitions over a period of time.

9. These Restrictions shall remain in full force and effect for a period of 50 years and shall be automatically renewed and continued in effect for additional periods of 50 years each until such time as these Restrictions are repealed in accordance with the provisions of Paragraph 8 hereof. The terms of this Paragraph may be modified in accordance with the provisions of Paragraph 8 hereof.

GRANTEE'S ADDRESS: Town of Sullivan's Island
Town Hall
P. O. Box 427
Sullivan's Island, SC 29482

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Town of Sullivan's Island, South Carolina, its Successors and Assigns forever.

BK K 200PG500

AND it does hereby bind itself and its Successors, to warrant and forever defend, all and singular the said Premises unto the said Town of Sullivan's Island, South Carolina, its Successors and Assigns, against it and its Successors, lawfully claiming, or to claim the same or any part thereof.

WITNESS its Hand and Seal, this 12 day of February, in the year of our Lord one thousand nine hundred and ninety-one and the two hundred and fifteenth year of the sovereignty and Independence of the Untied States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

LOWCOUNTRY OPEN LAND TRUST

By: _____
Its: President

By: Susan A. Kidd
Its: Vice President

STATE OF SOUTH CAROLINA)

CHARLESTON COUNTY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named LOWCOUNTRY OPEN LAND TRUST by its authorized officer(s), sign, seal and as its act and deed, deliver the within written Deed, and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this 12
day of February A.D. 1991

_____(SEAL)
Notary Public for South Carolina
My commission expires: 4-2-96

_____
(Signature of Witness)

EXHIBIT A

All those lots, parcels and pieces of property located within the Town of Sullivan's Island, County of Charleston, State of South Carolina, being more specifically described as follows:

Parcel 1

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Star of the West Street, Middle Street, Station 12 Street, and the mean high water mark of the waters of the Atlantic Ocean and Charleston harbor. Said property is also shown as Parcel #1 on the below described plat attached hereto and marked Exhibit B.
TMS: 523-06-00-073

Parcel 2

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Palmetto Street, Poe Avenue, Station 16 Street, and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #2 on the below described plat attached hereto and marked Exhibit B.

SPECIFICALLY SAVING AND EXCEPTING all that land now owned by the United States Government.

SPECIFICALLY SAVING AND EXCEPTING all those lots, parcels and pieces of land know as Tract A and Tract B on a plat by William Porcher, dated April 21, 1989, entitled "Plat Showing Battery Logan Owned by Sullivan's Island Board of Township Commissioners, Being Subdivided into Tract A and Tract B, Sullivan's Island, Charleston County, South Carolina" being duly recorded in the R.M.C. Office for Charleston County on the 24th day of May, 1989, in Plat Book BW, at Page 28.
TMS: 523-07-00-124

Parcel 3

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 16 Street, Atlantic Avenue, Station 18 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #3 on the below described plat attached hereto and marked Exhibit B.
TMS: 523-12-00-077

Parcel 4

All that real property not previously conveyed by the Board of

Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 18 Street, I'on Street, Station 18-1/2 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #4 on the below described plat attached hereto and marked Exhibit B.

SPECIFICALLY SAVING AND EXCEPTING Lots M, N, M2, N2, and property presently owned by the United States Coast Guard, along with West Atlantic Avenue as shown on plat entitled "Town of Sullivan's Island, Charleston County, South Carolina", dated May 18, 1964, attached hereto and incorporated herein as Exhibit B.

TMS: 529-09-00-112

Parcel 5

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 18-1/2 Street, Thee Street, the western boundary of the lands now leased by Charleston County School District No. 2 and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #5 on the below described plat atiached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 6

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated seaward beyond the boundaries of all that real property leased under School District No. 2 of Charleston County, State of South Carolina as more specifically shown by Grant of Lease dated the 23rd day of April, 1954, and recorded in the R.M.C. Office for Charleston County in Book N58, at Page 150. Said property is also shown as Parcel #6 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 7

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by the eastern boundaries of the lands now leased by Charleston County School District No. 2, Pettigrew Street, Station 22 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #7 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 8

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 22 Street, East Atlantic Avenue and Station 22-1/2 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #8 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-09-00-112

Parcel 9

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 22-1/2 Street, Bayonne Street, Station 28 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as Parcel #9 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-10-00-087

Parcel 10

All that real property not previously conveyed by the Board of Township Commissions, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated within the boundaries created by Station 28 Street, Marshall Boulevard, Station 32 Street and the mean high water mark of the waters of the Atlantic Ocean. Said property is also shown as parcel #10 on the below described plat attached hereto and marked Exhibit B.

TMS: 529-11-00-109

Parcel 11

All that real property not previously conveyed by the Board of Township Commissioners, Town Council of Sullivan's Island, the State of South Carolina or their predecessors in title, located and situated and lying seaward of those lots known and described as Lots 1 through 5, Block 16 and Lots 1 through 7, Block 17, as more specifically shown on the below described plat which is marked Exhibit B. Said property is also shown as Parcel #11 on the below described plat attached hereto and marked Exhibit B.

The above tracts of land are more specifically shown and delineated as the colored portion of a plat entitled "Sullivan's Island, Charleston County, South Carolina", dated May 18, 1964, which is attached hereto and incorporated herein by reference and marked Exhibit B.

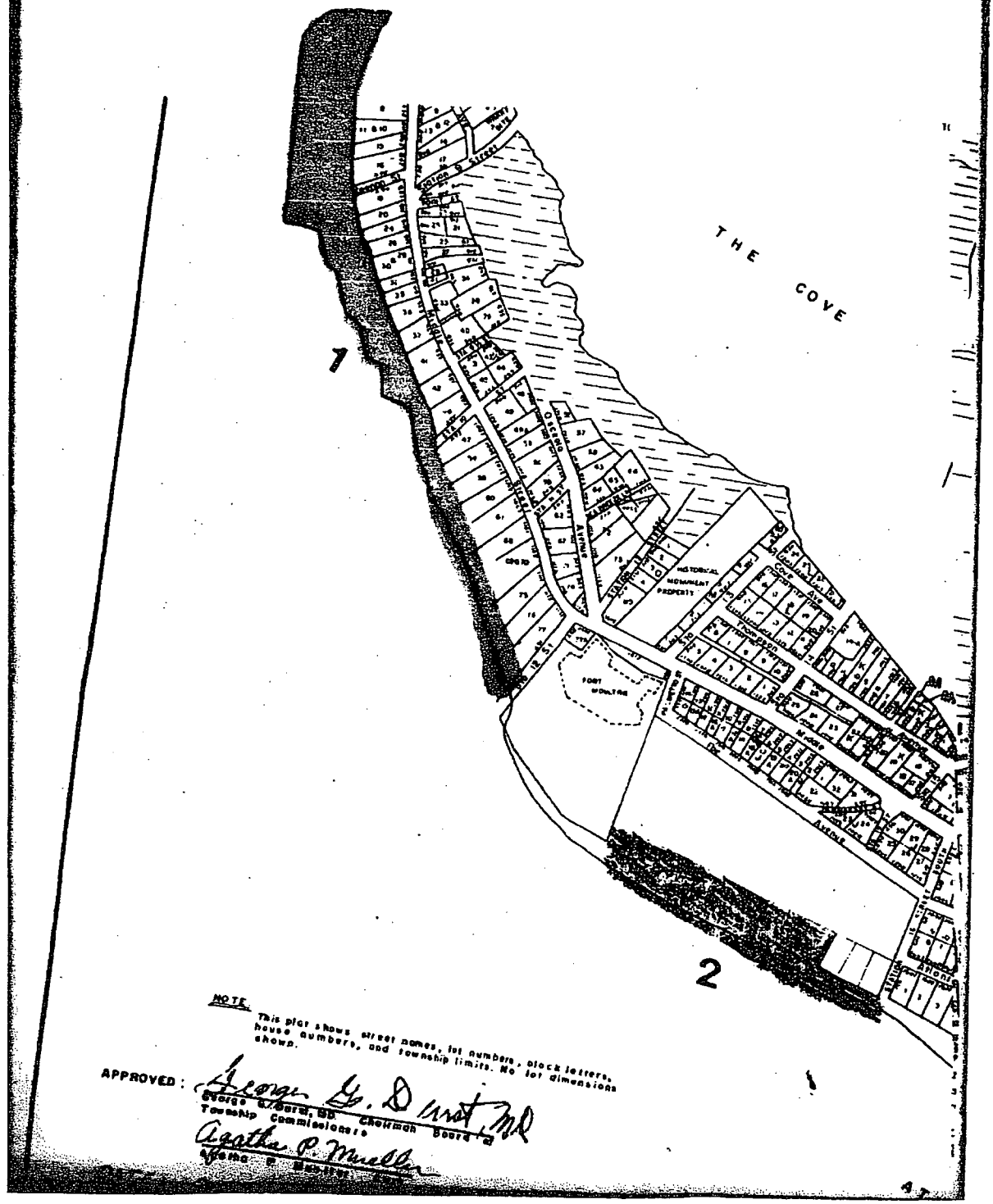
TMS: 529-12-00-116

Being the same property conveyed to the Grantor herein by Deed of even date from the Town of Sullivan's Island which is recorded in the RMC Office for Charleston County prior to the recording of this deed but simultaneously herewith in Book _____, at Page _____.

Grantees address: P. O. Box 1293
450 King Street
Charleston, SC 29402

BK K 200PG505

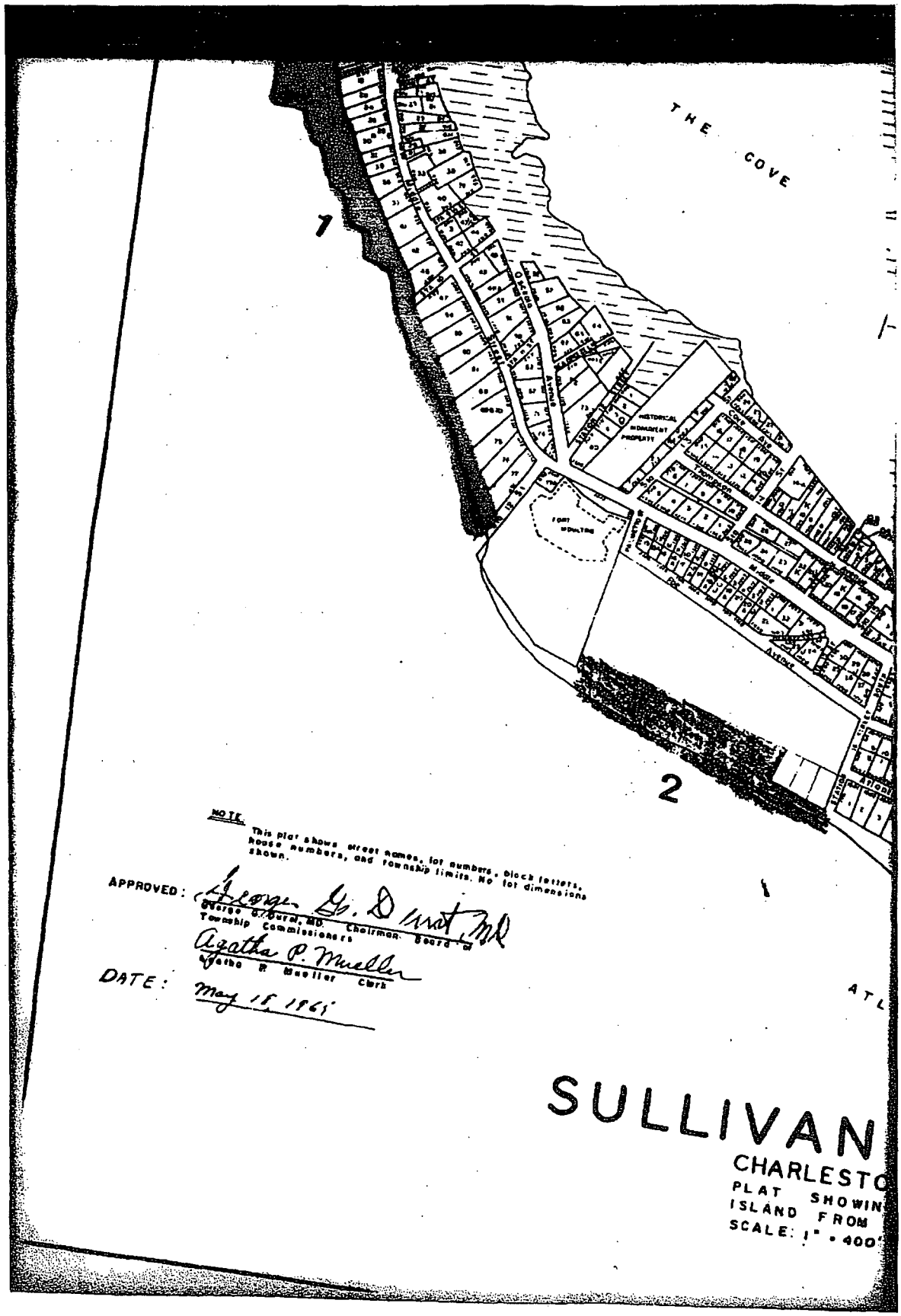
EXHIBIT B



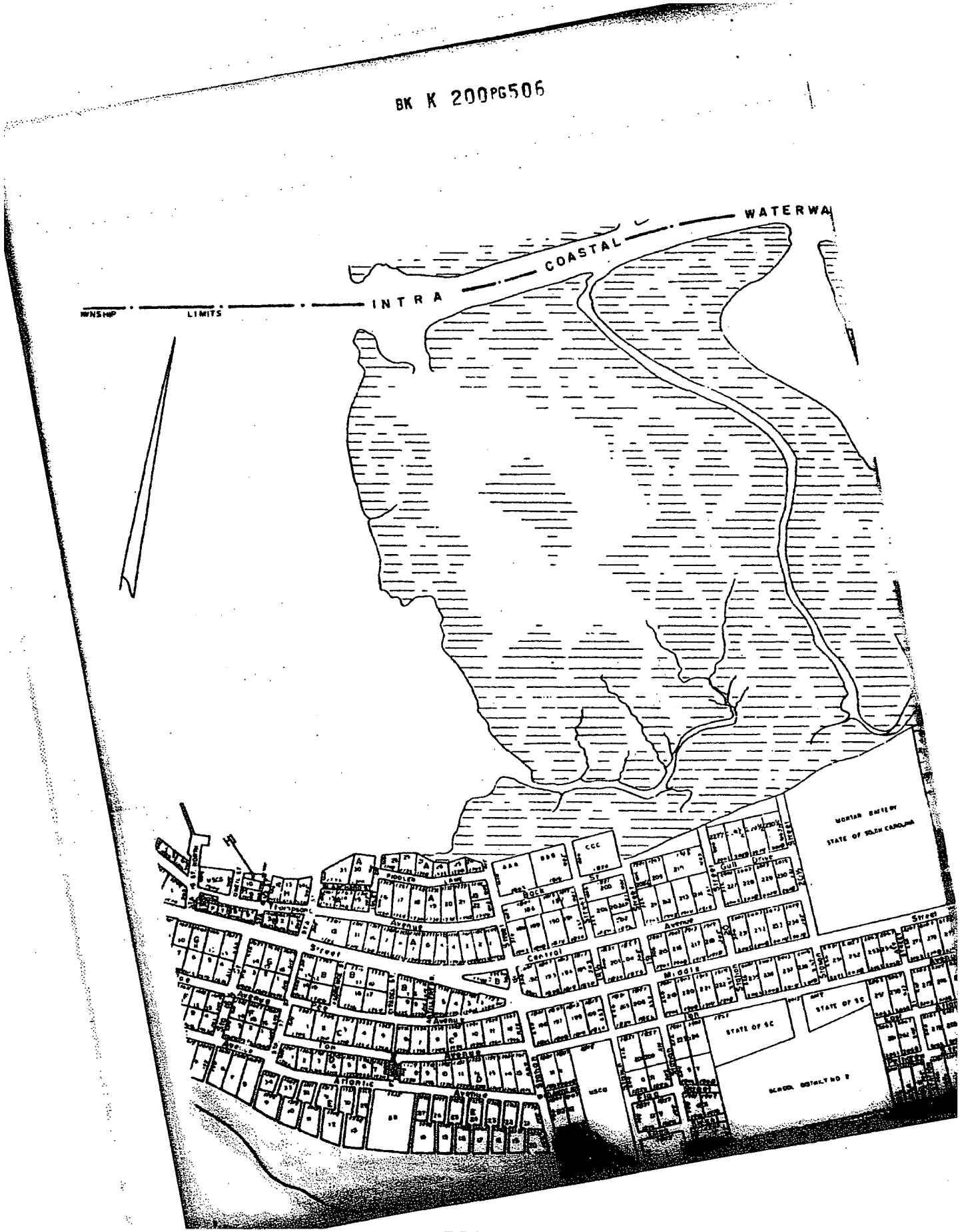
NOTE: This plat shows street names, lot numbers, block letters, house numbers, and township limits. No lot dimensions shown.

APPROVED: George G. Dunst MD
George G. Dunst, MD Chairman Board of Township Commissioners

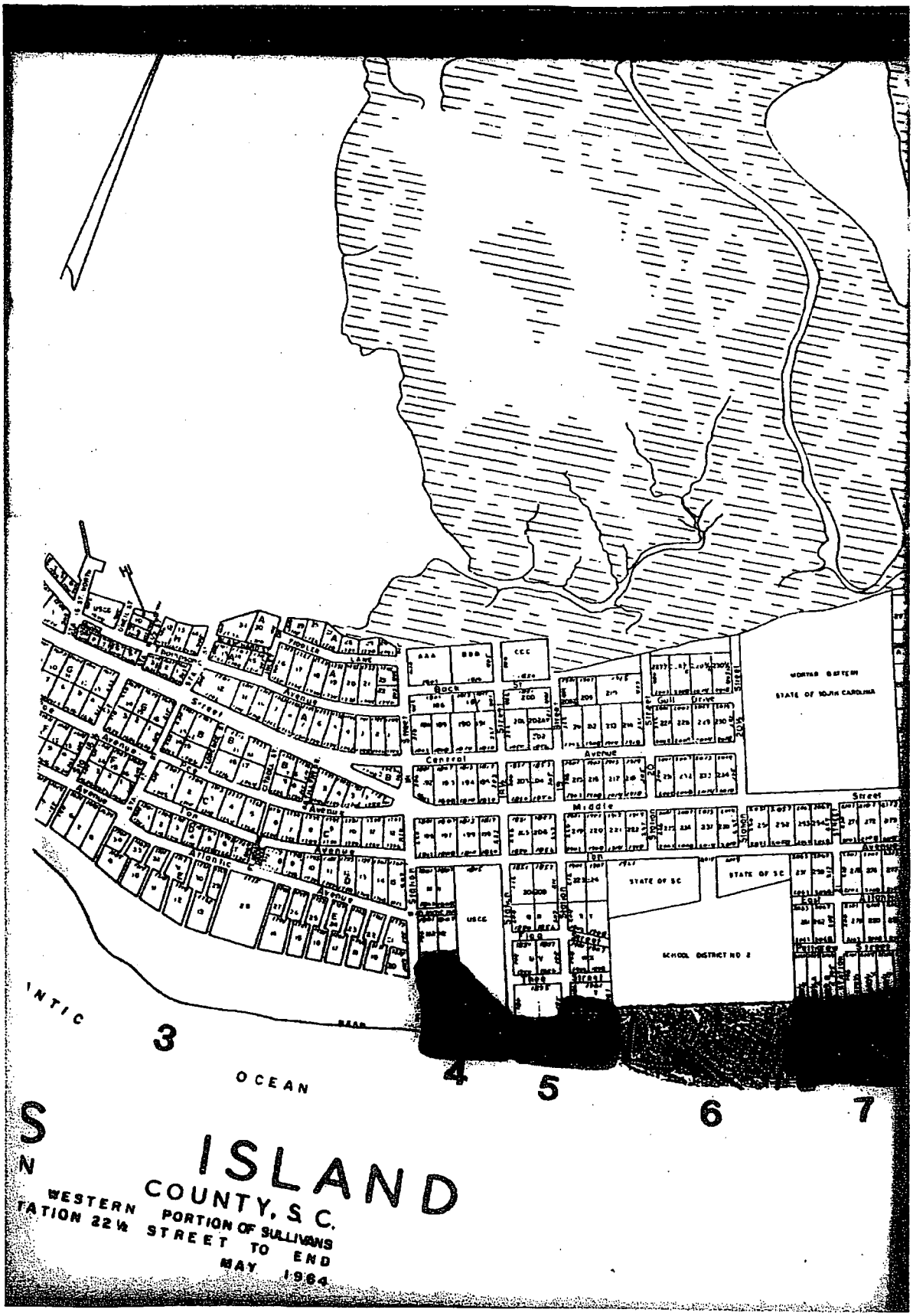
Agatha P. Mueller
Agatha P. Mueller


THE COVE
1
2
NOTE.
This plat shows street names, lot numbers, block letters, house numbers, and township limits. No lot dimensions shown.
APPROVED:
George G. Durst, MD. Chairman Board of Township Commissioners
Agatha P. Mueller
Agatha P. Mueller Clerk
DATE: May 15 1961
SULLIVAN
CHARLESTO
PLAT SHOWIN
ISLAND FROM
SCALE: 1" = 400'

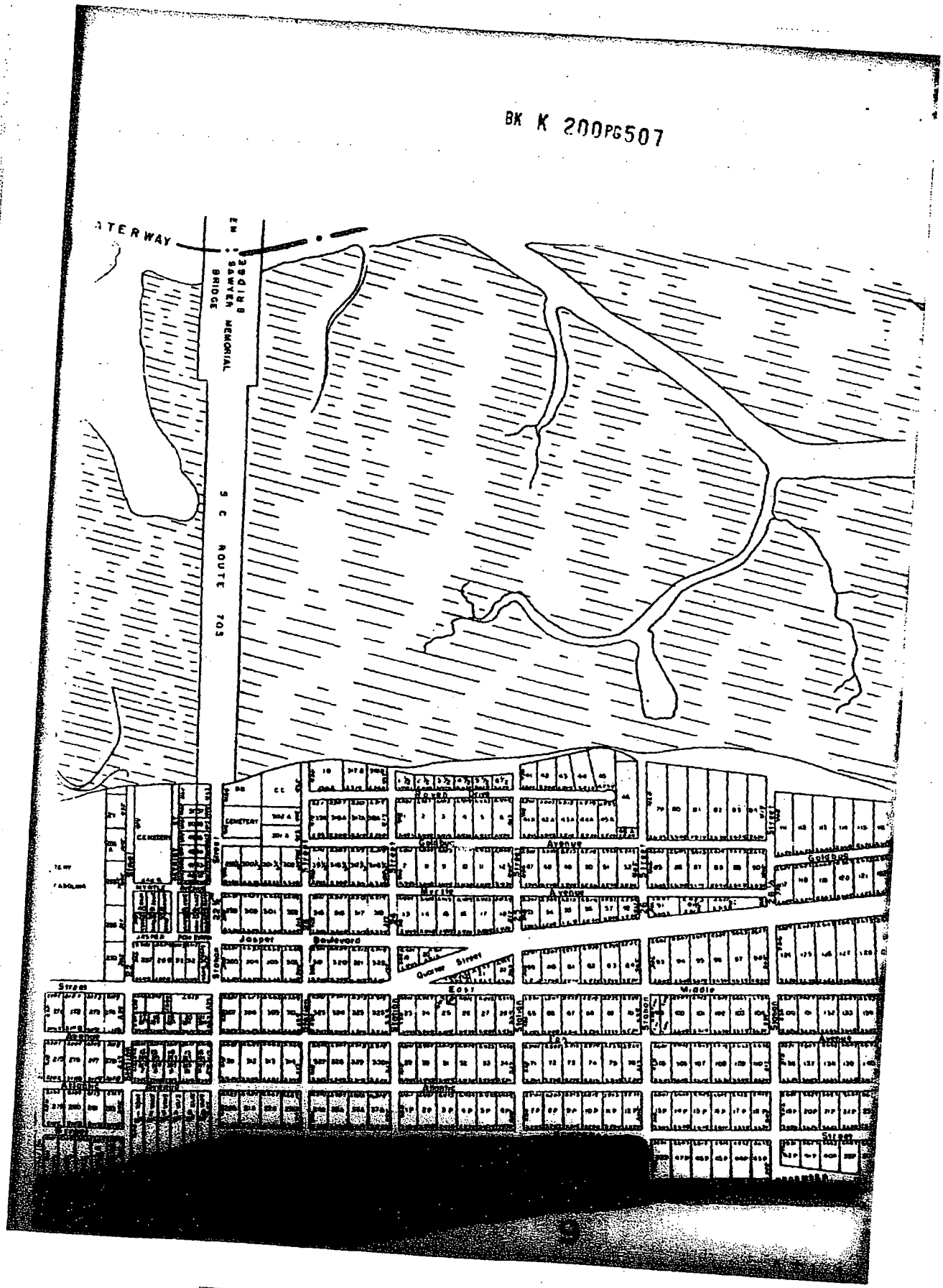
BK K 200PG506

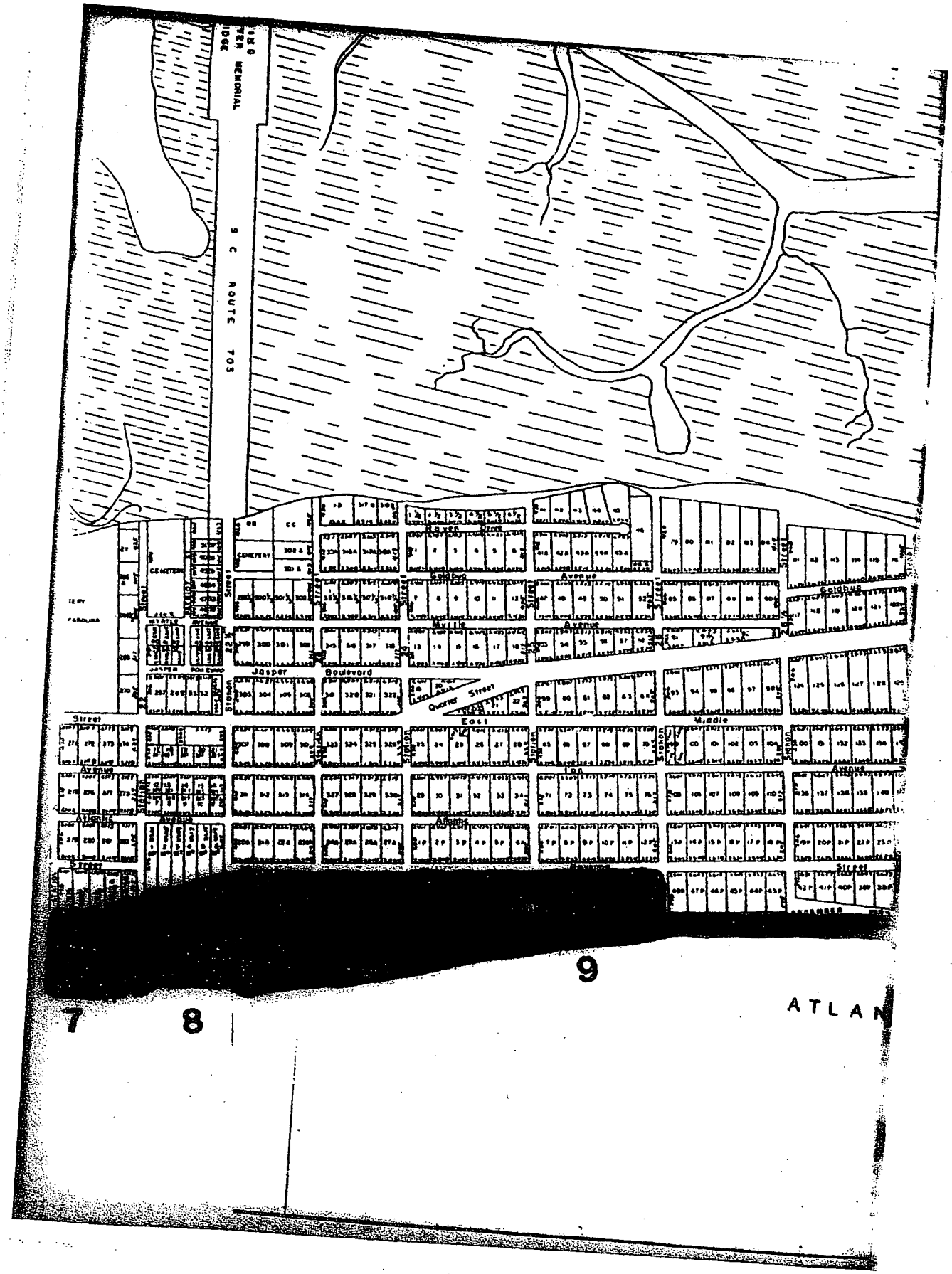


ROA 107

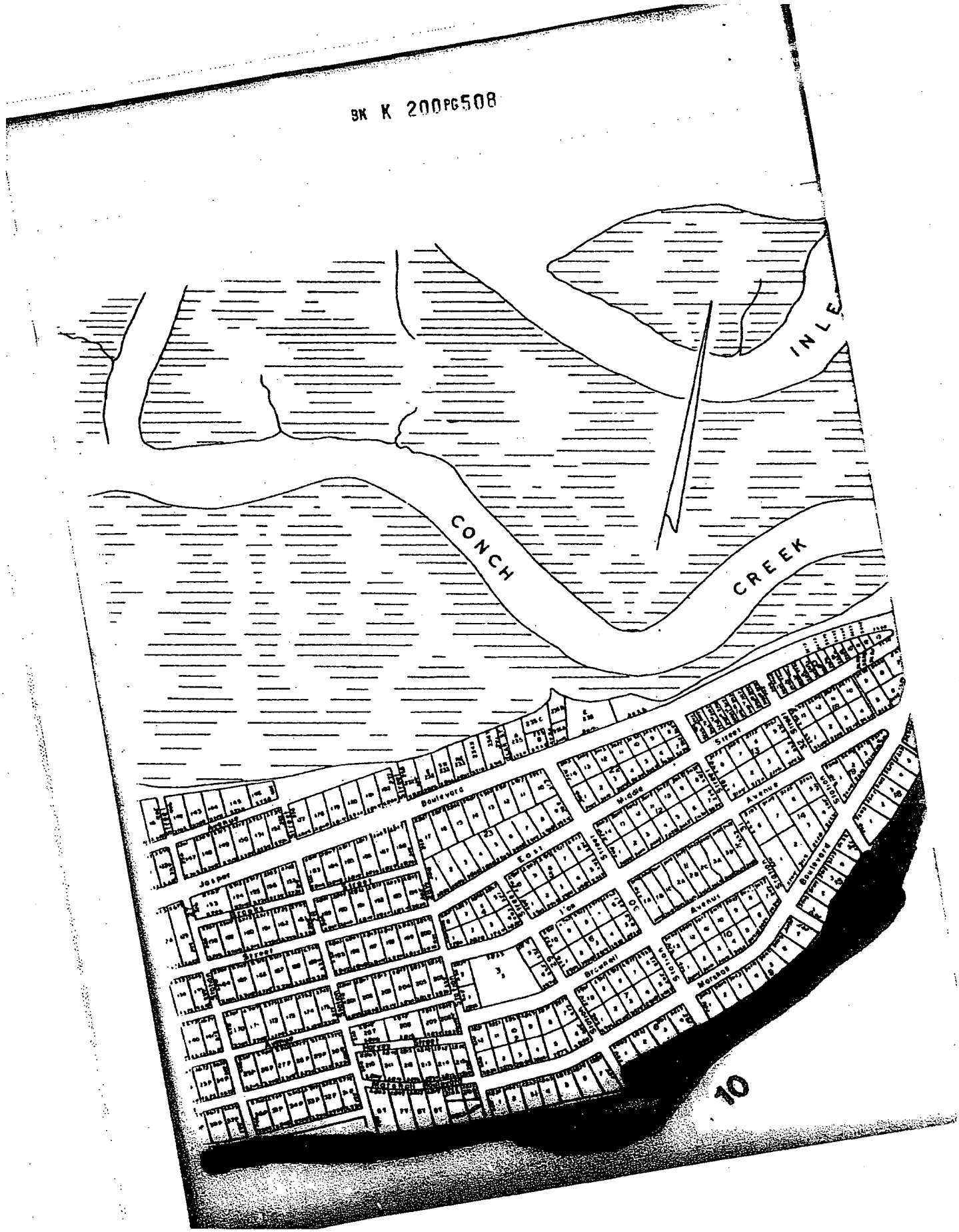

OCEAN
3
4
5
6
7
ISLAND
COUNTY, S. C.
WESTERN PORTION OF SULLIVANS
STATION 22½ STREET TO END
MAY 1964
USCG
STATE OF SC
SCHOOL DISTRICT NO 2
NORTH BATTERY
STATE OF SOUTH CAROLINA

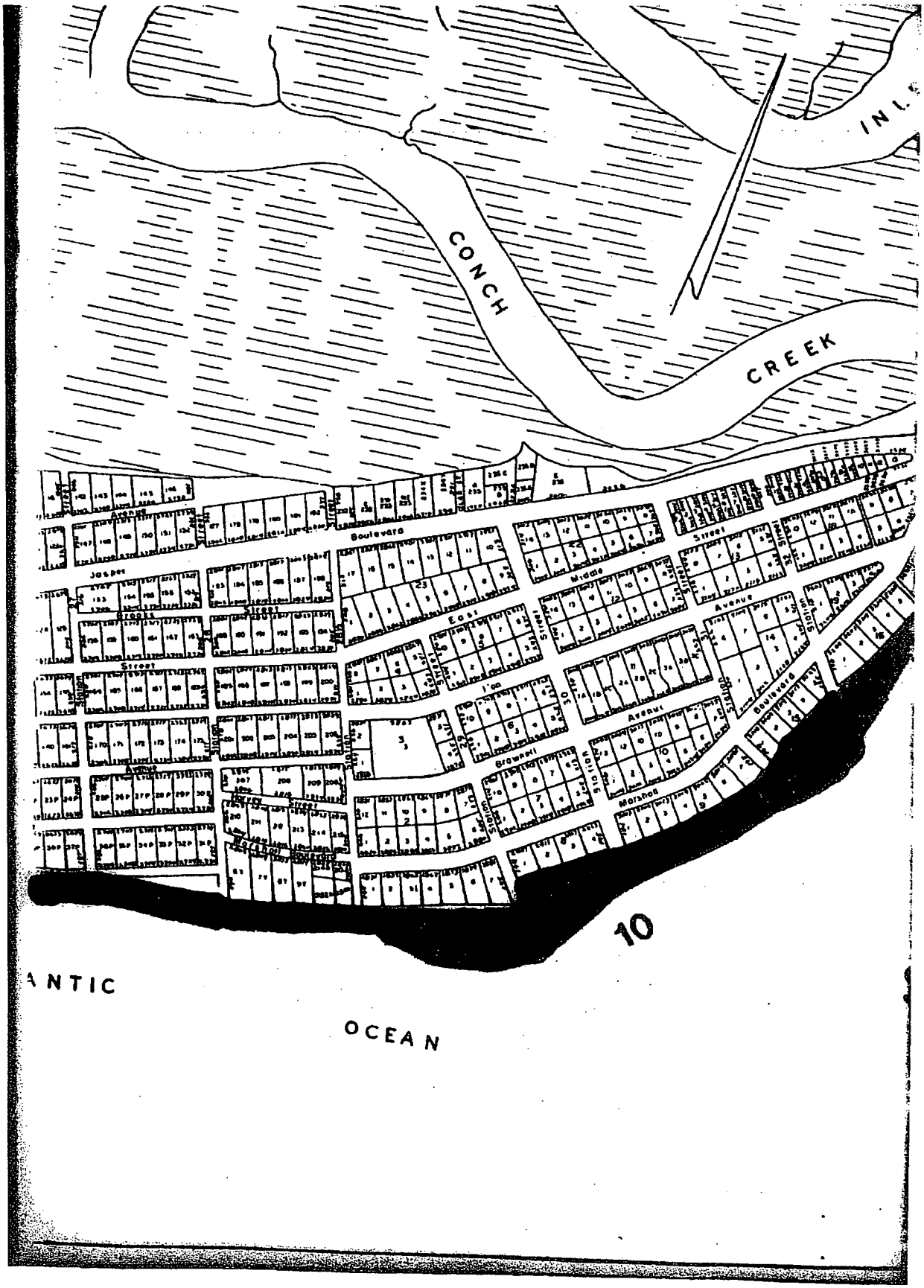
BK K 200PG507



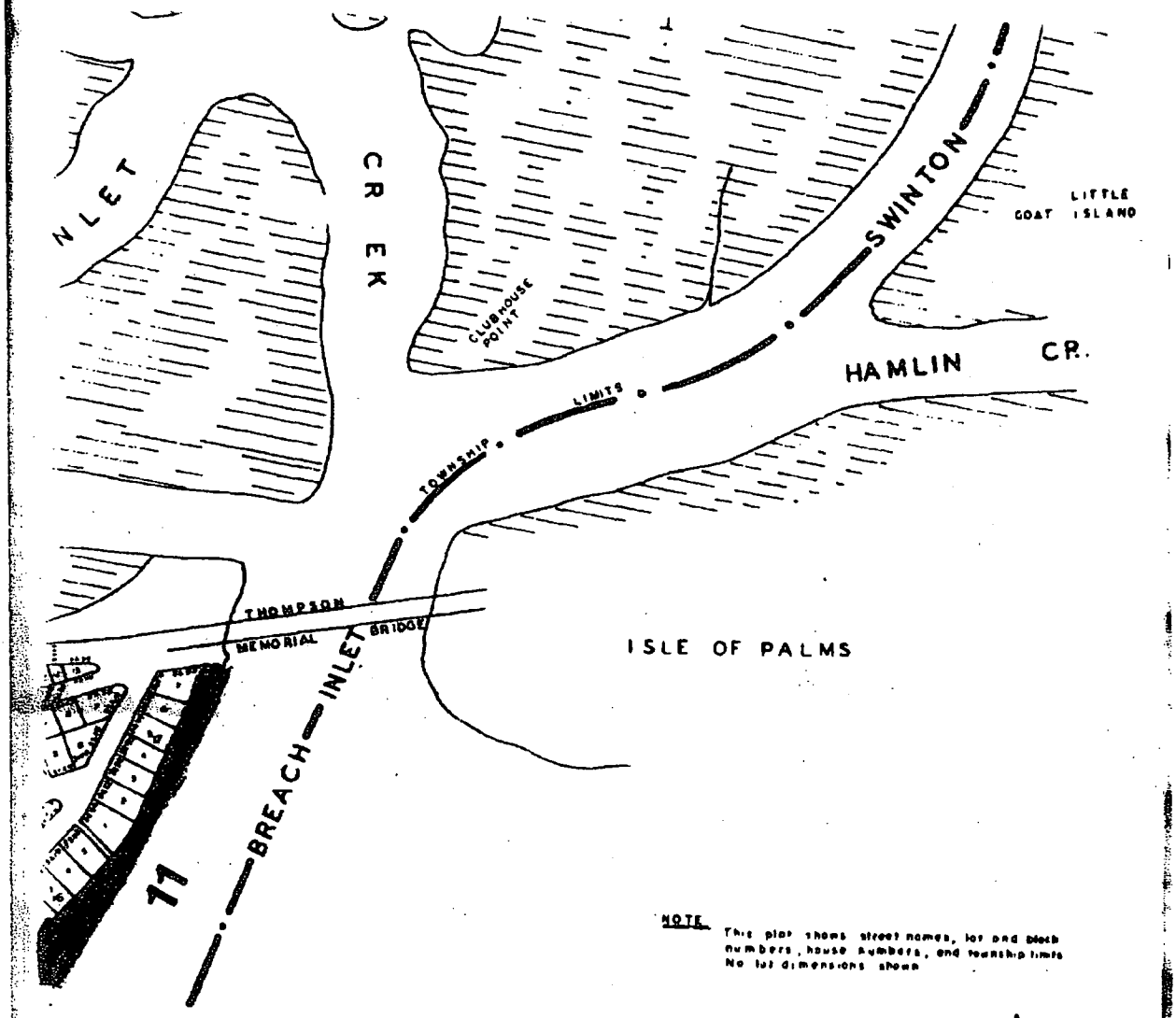

S C ROUTE 703
Jasper Boulevard
Quarter Street
East
Middle
Street
Avenue
Atlantic
Pine
7
8
9
ATLAN

BK K 200PG508




CONCH
CREEK
Boulevard
Street
Avenue
Jasper
Brooks
East
Middle
Union
Browne
Marine
10
ANTIC
OCEAN

BK K 200PG509

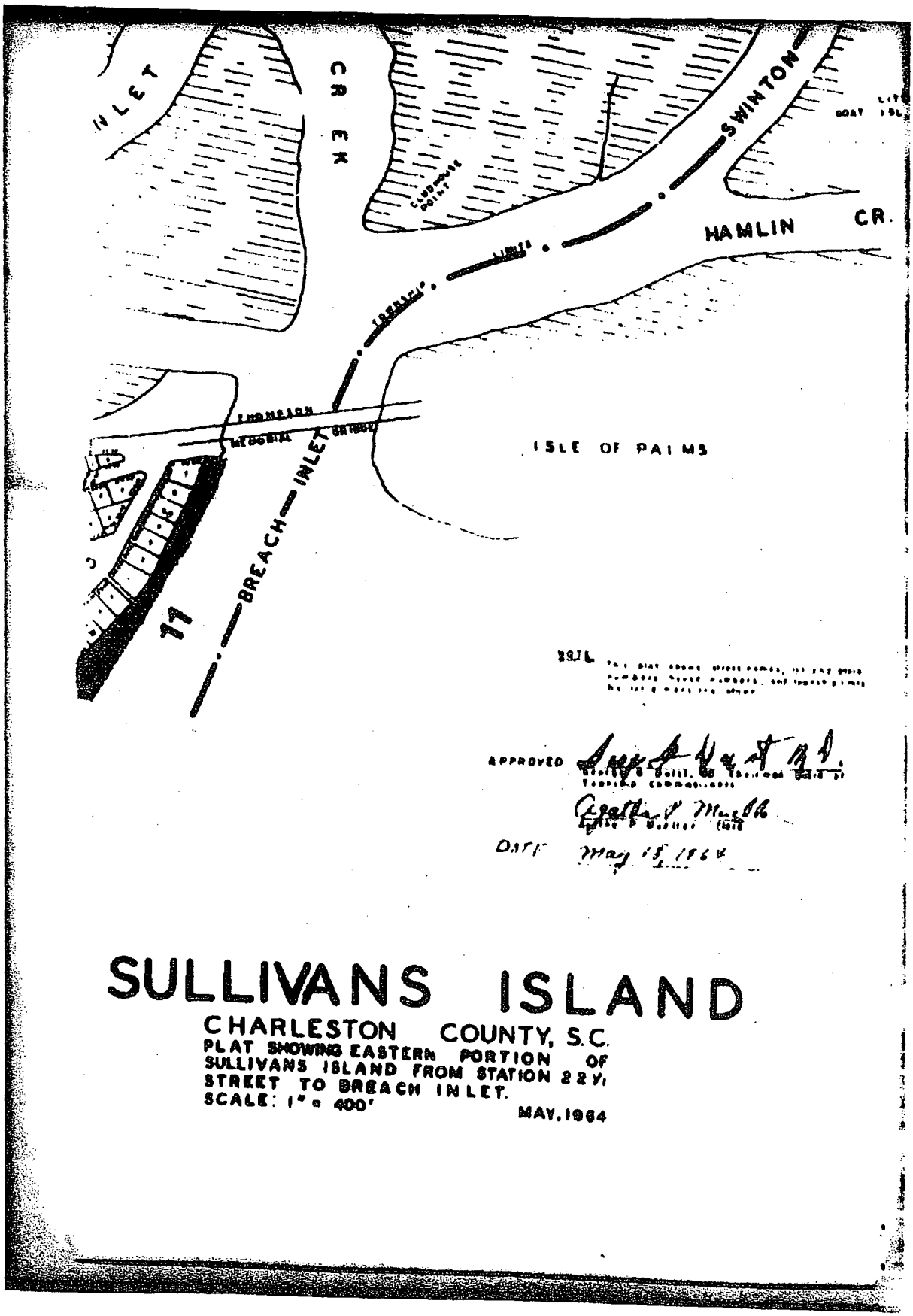


NOTE This plat shows street names, lot and block numbers, house numbers, and township limits No lot dimensions shown

APPROVED: George E Darst, MD Chairman Board of Township Commissioners

Agatha P Mueller Clerk

DATE: May 18, 1964



APPROVED

DATE May 15, 1964

SULLIVANS ISLAND

CHARLESTON COUNTY, S.C.

PLAT SHOWING EASTERN PORTION OF SULLIVANS ISLAND FROM STATION 22+1 STREET TO BREACH INLET.

SCALE: 1" = 400'

MAY, 1964

BK K 200PG510

SUDDUS = HENNESSY
ATTORNEYS AT LAW

26.00

FILED
K200-496
91 FEB 14 AM 9:51

ROBERT N. KING
REGISTER
CHARLESTON COUNTY SC

Recorded this 14 day of Feb - 91

On Property Record Card

Pauline S. Koger

Auditor Charleston County

Aerial Map of Sullivan's Island - October 1989

EXHIBIT 5

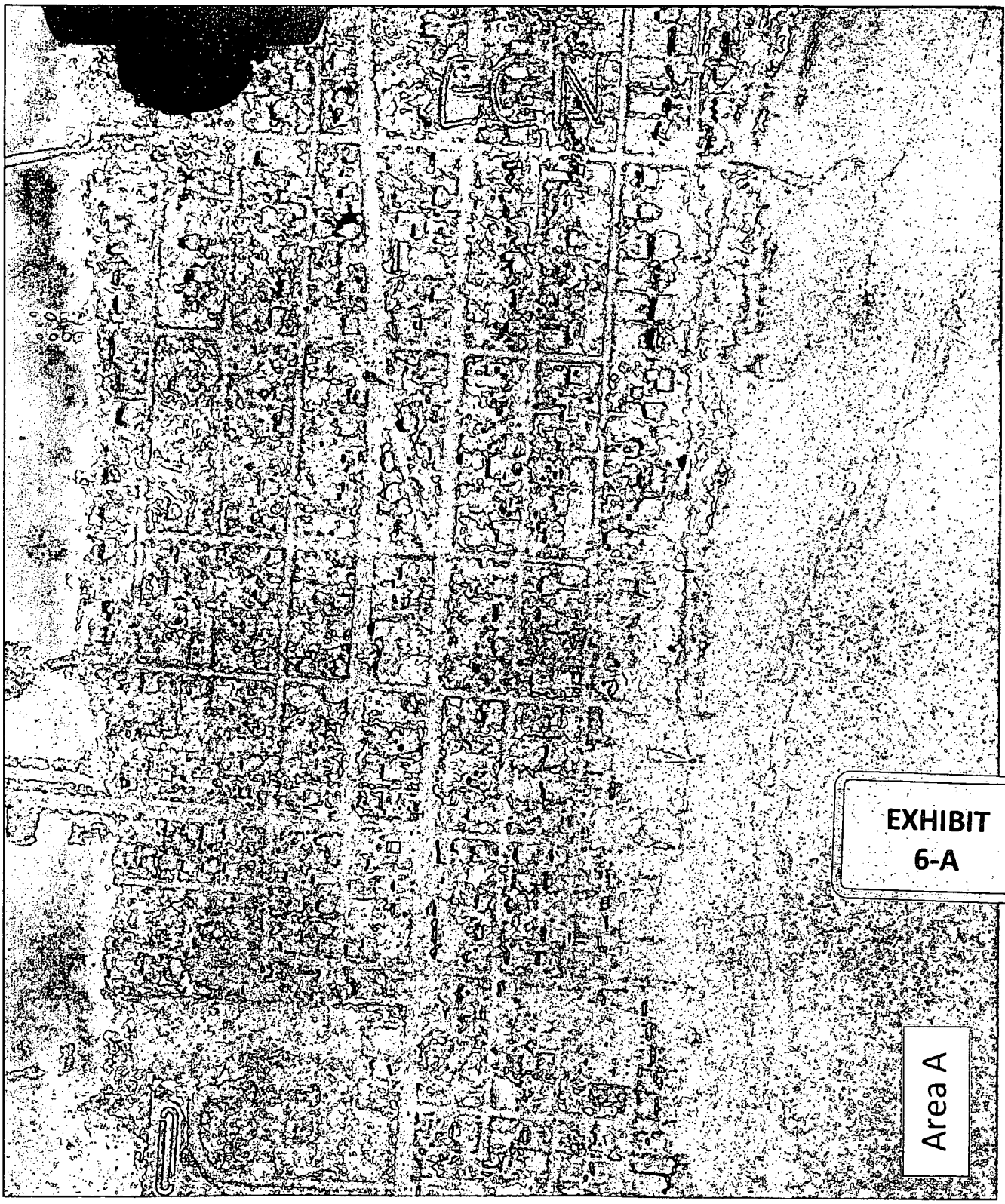


EXHIBIT
6-A
Area A

Area A
EXHIBIT
6-B

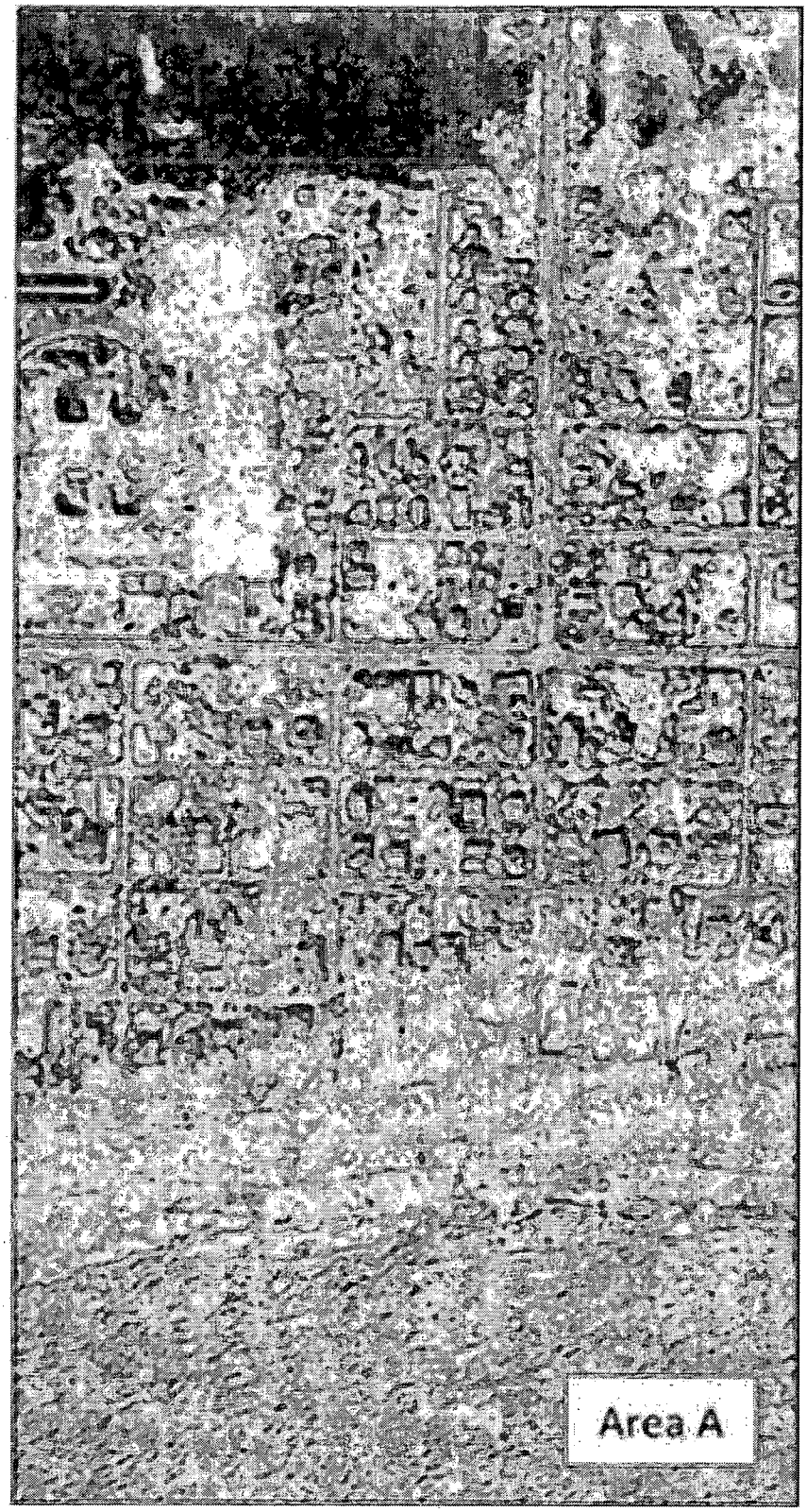


EXHIBIT
6-C

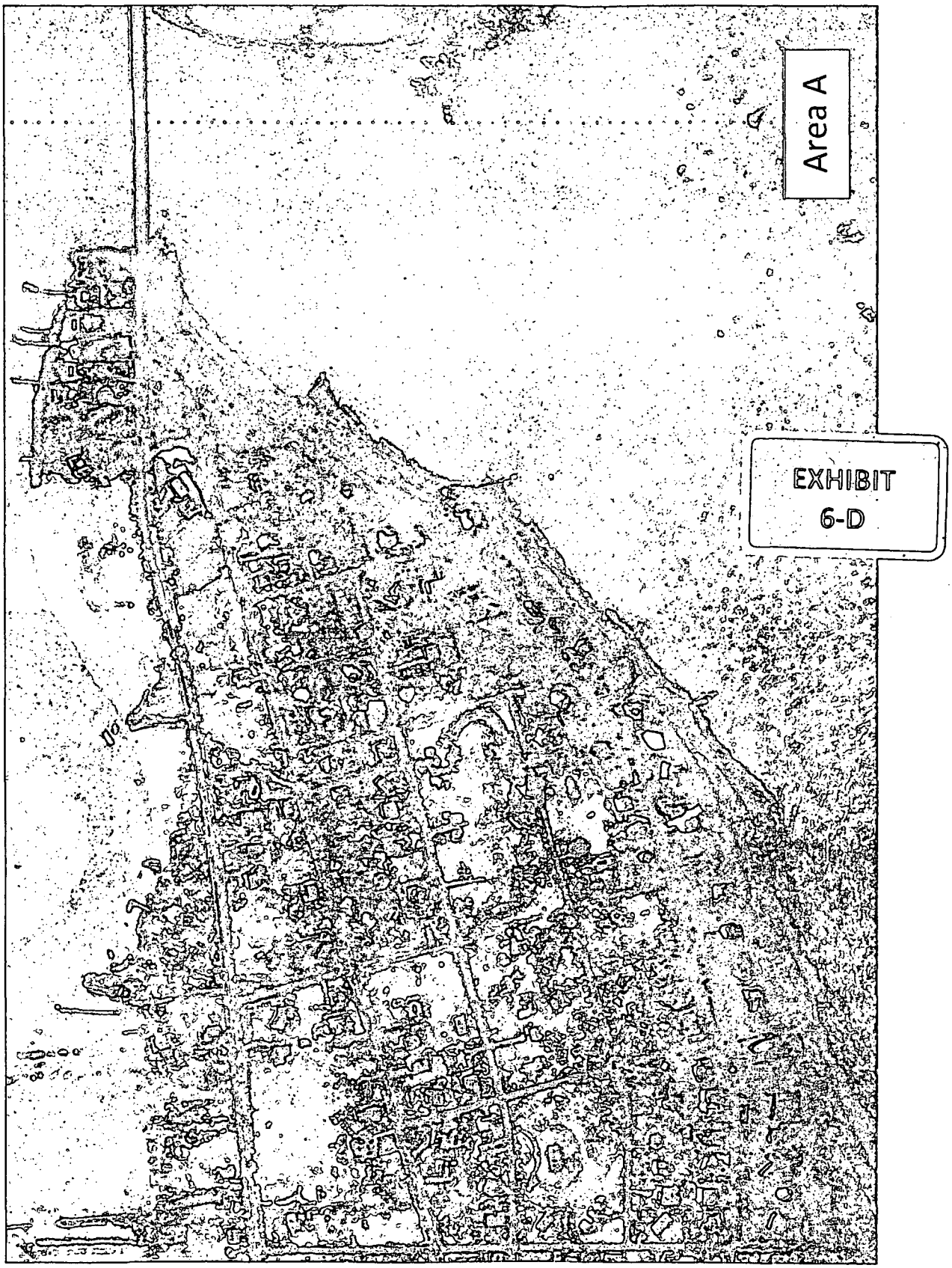
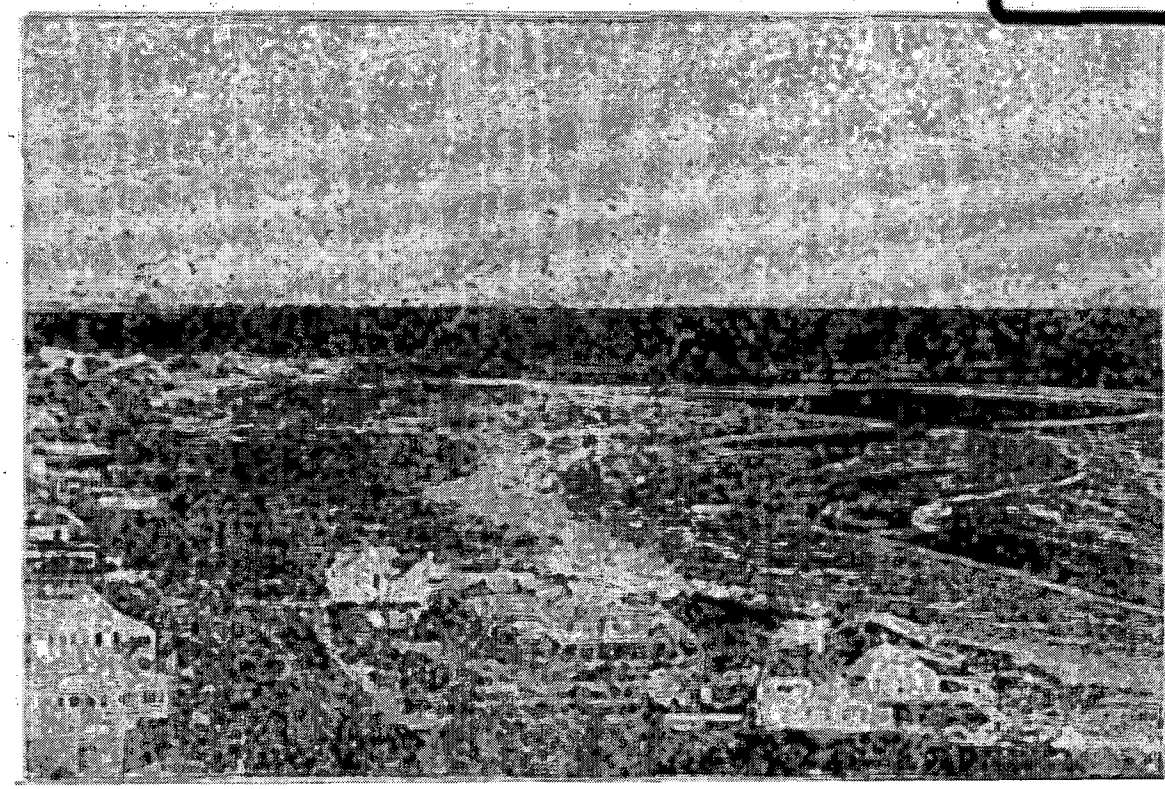

Area A
EXHIBIT
6-D

EXHIBIT
6-E



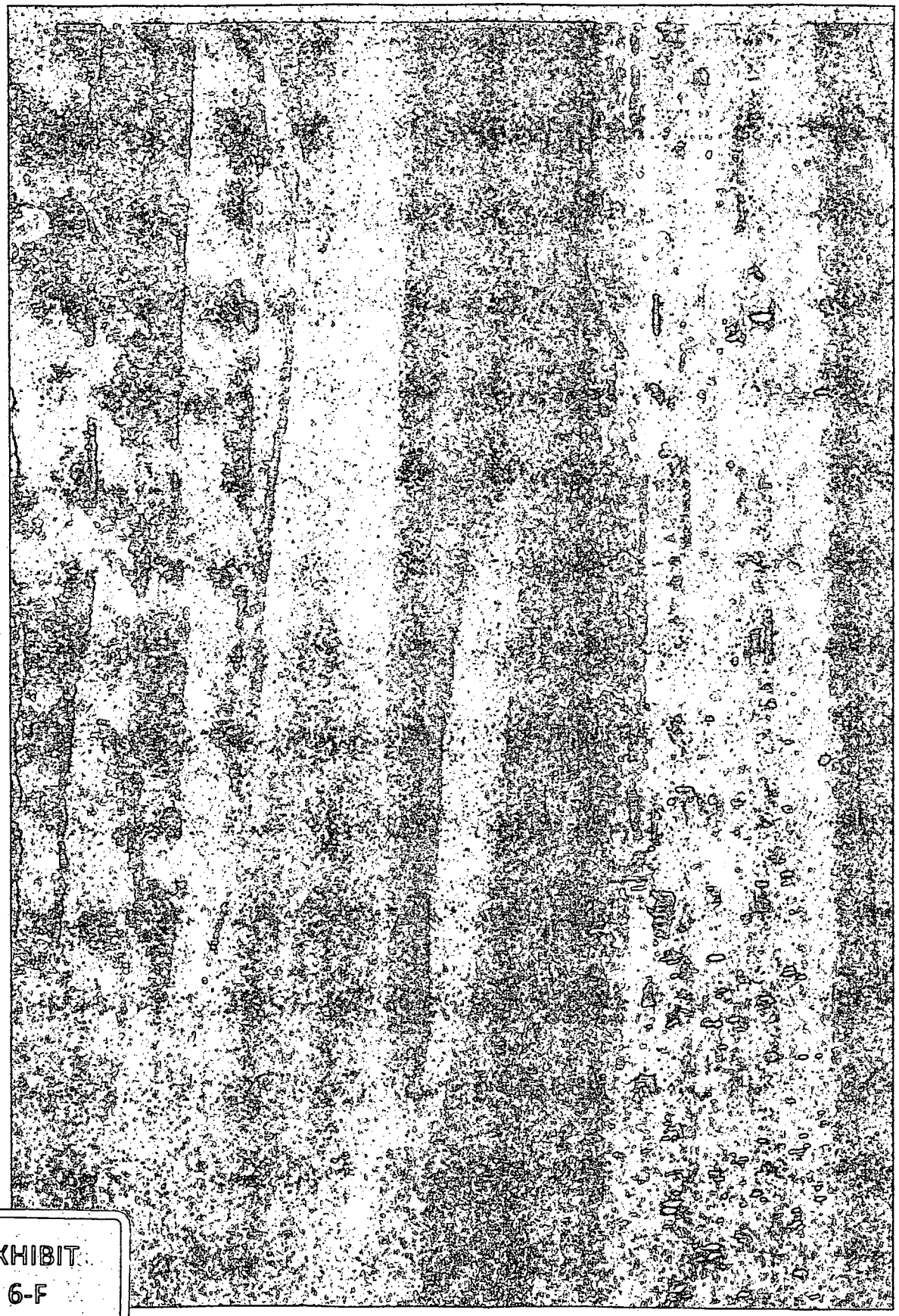
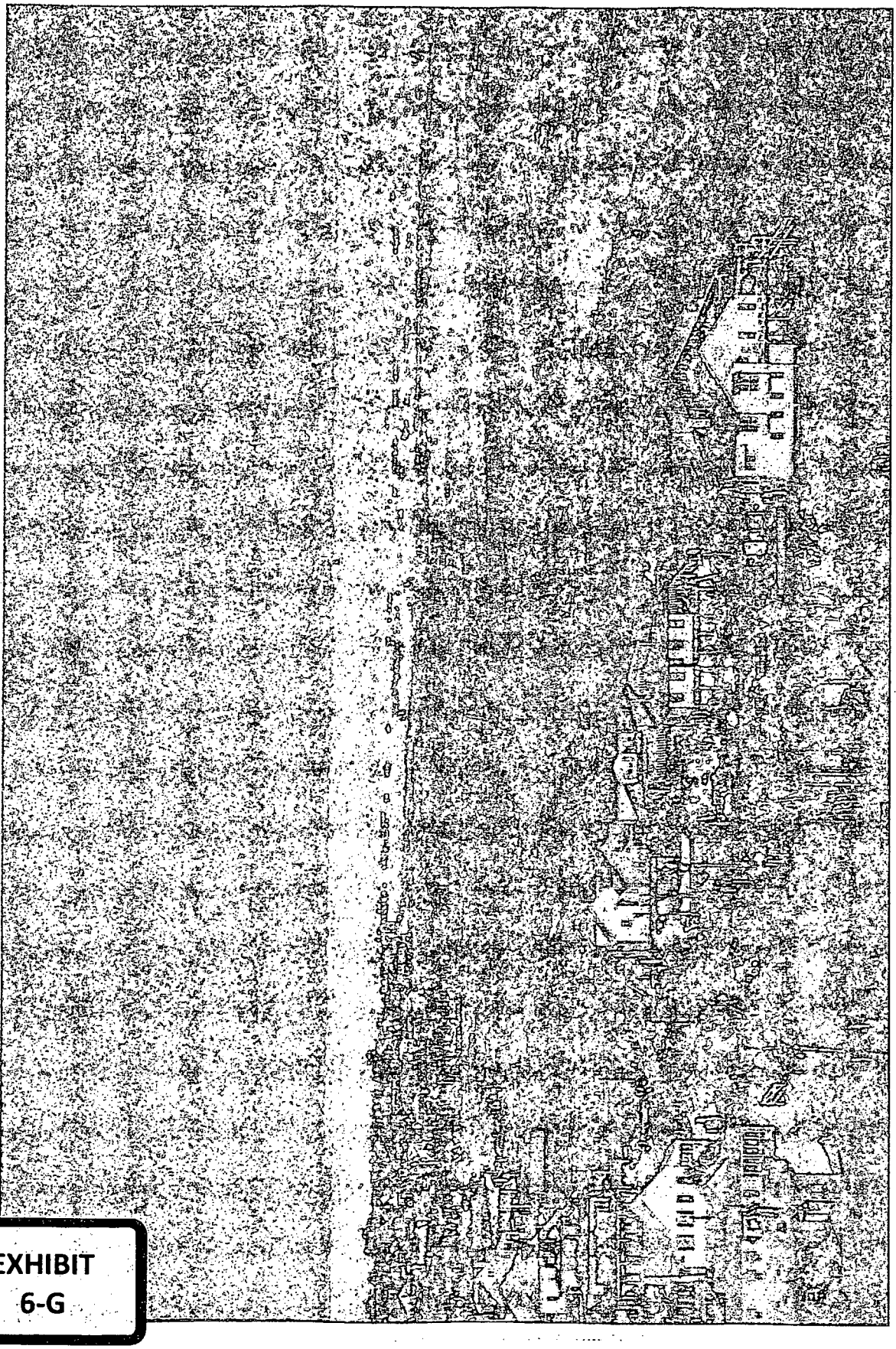


EXHIBIT
6-F



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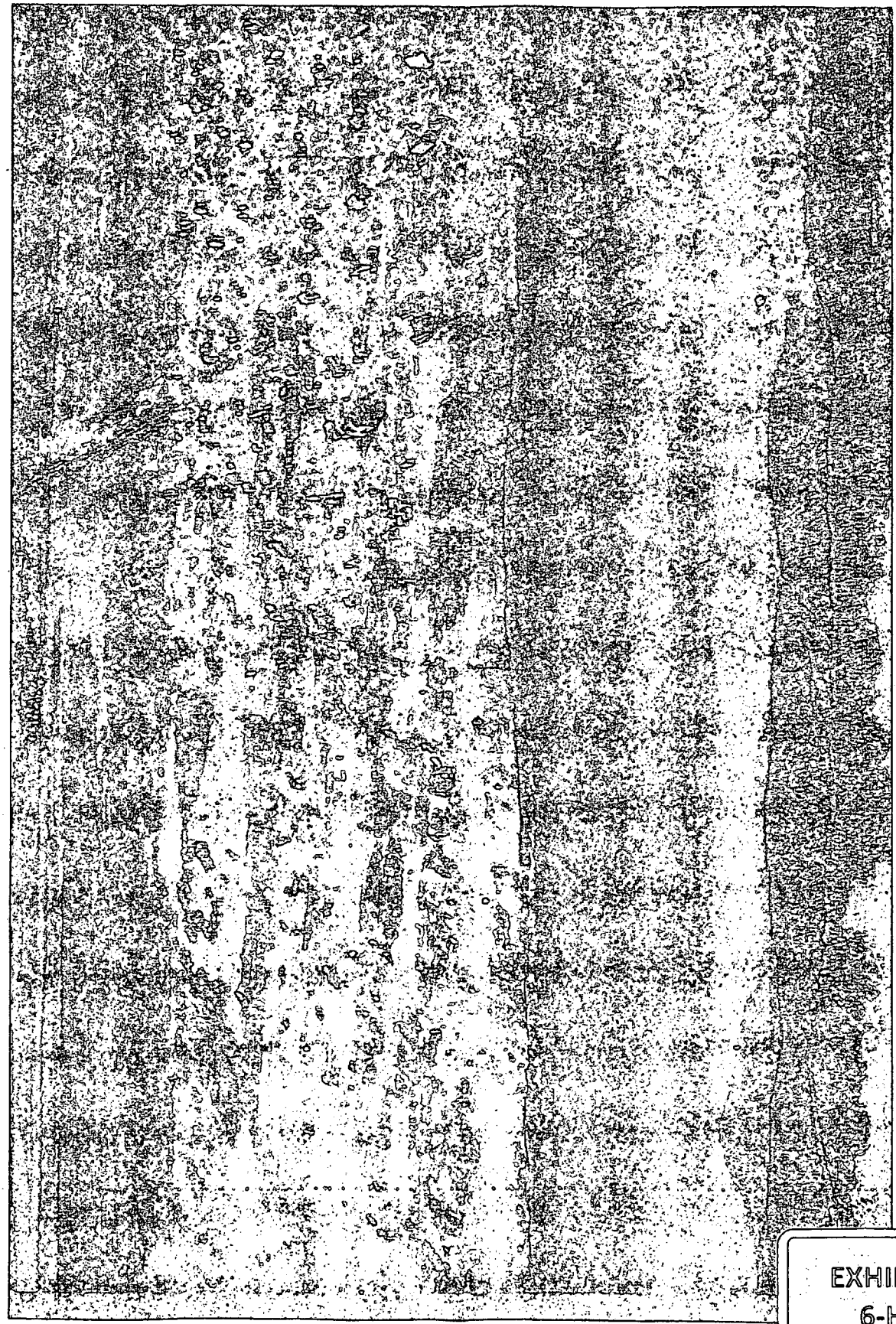
6-G



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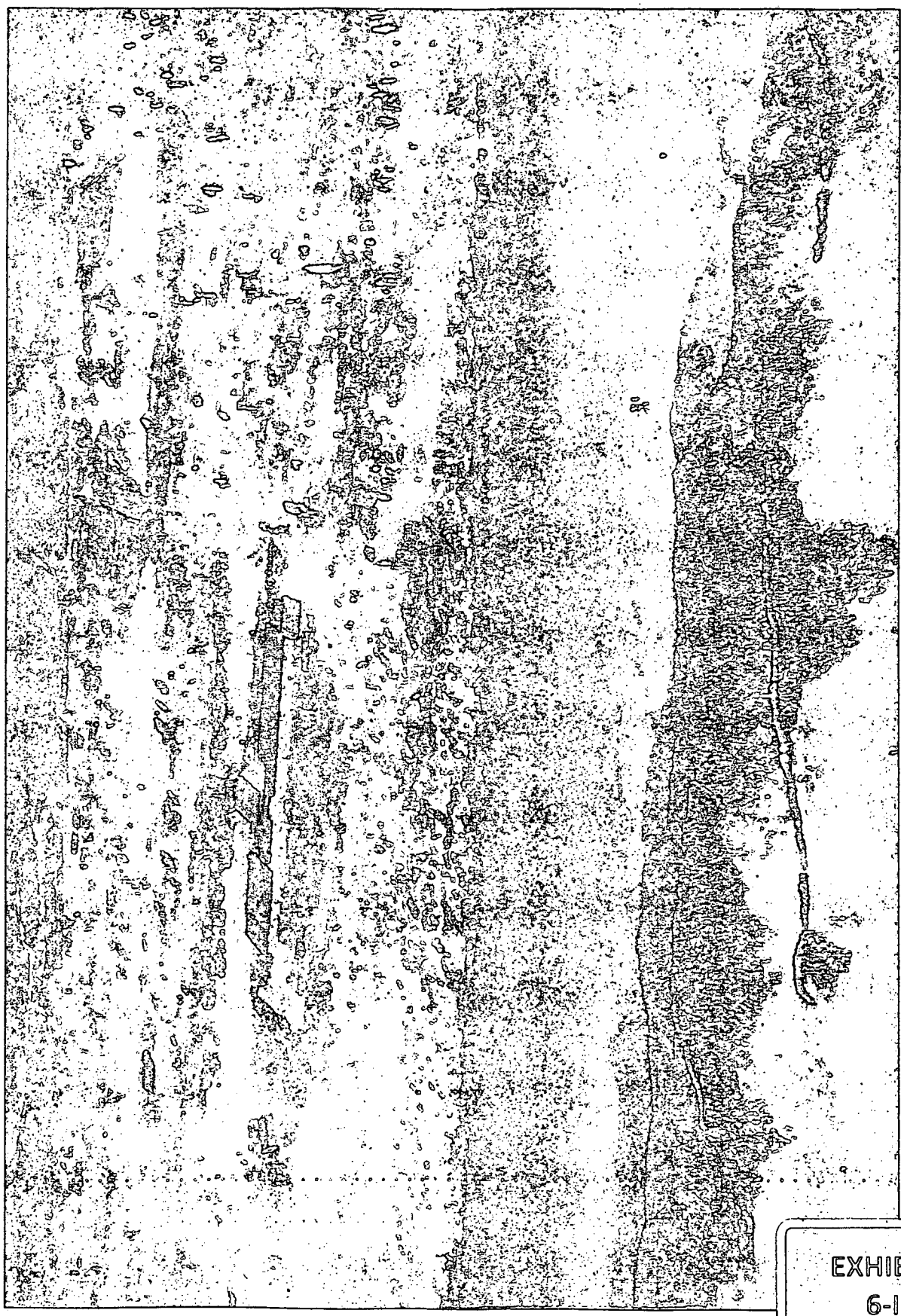
6-H



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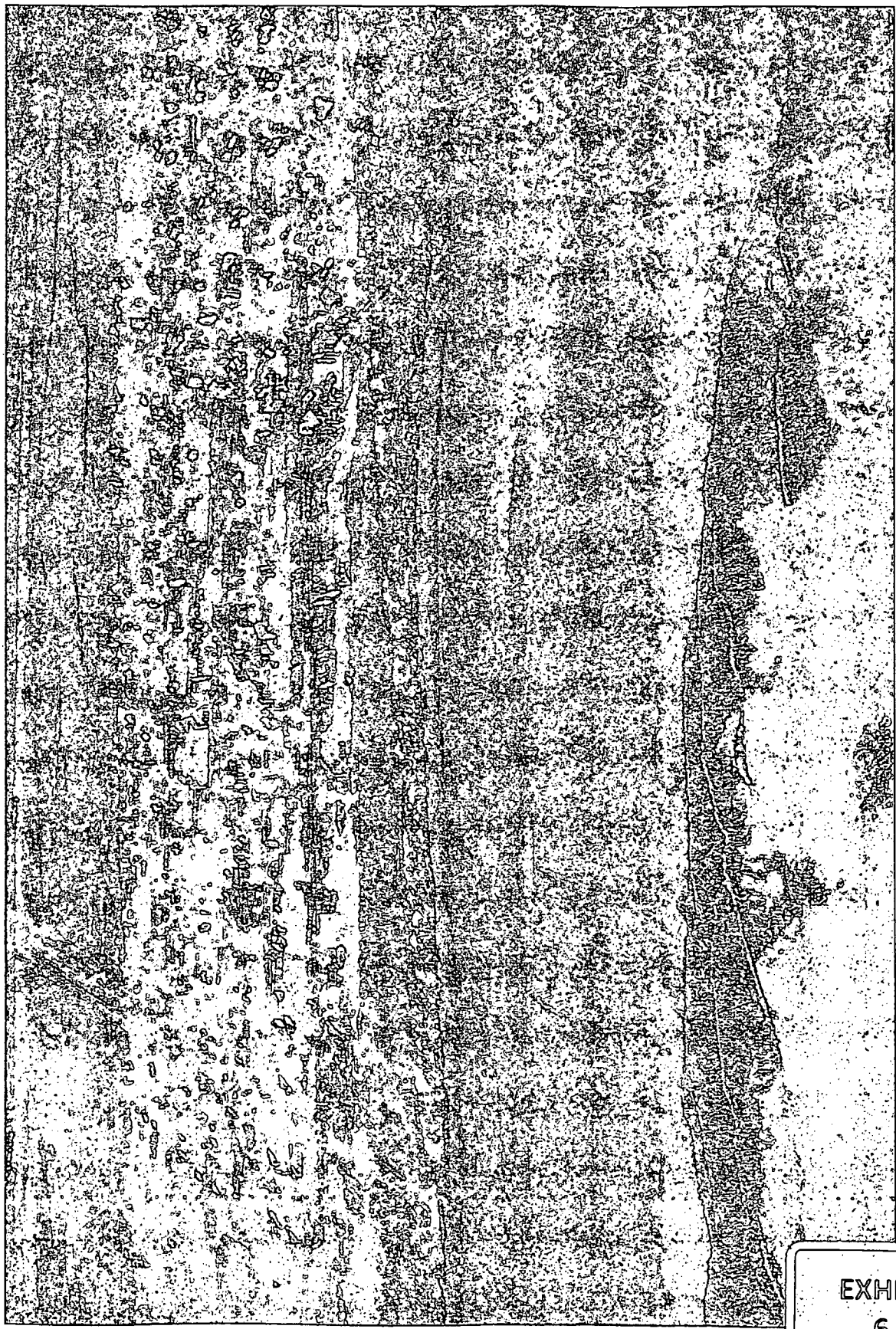

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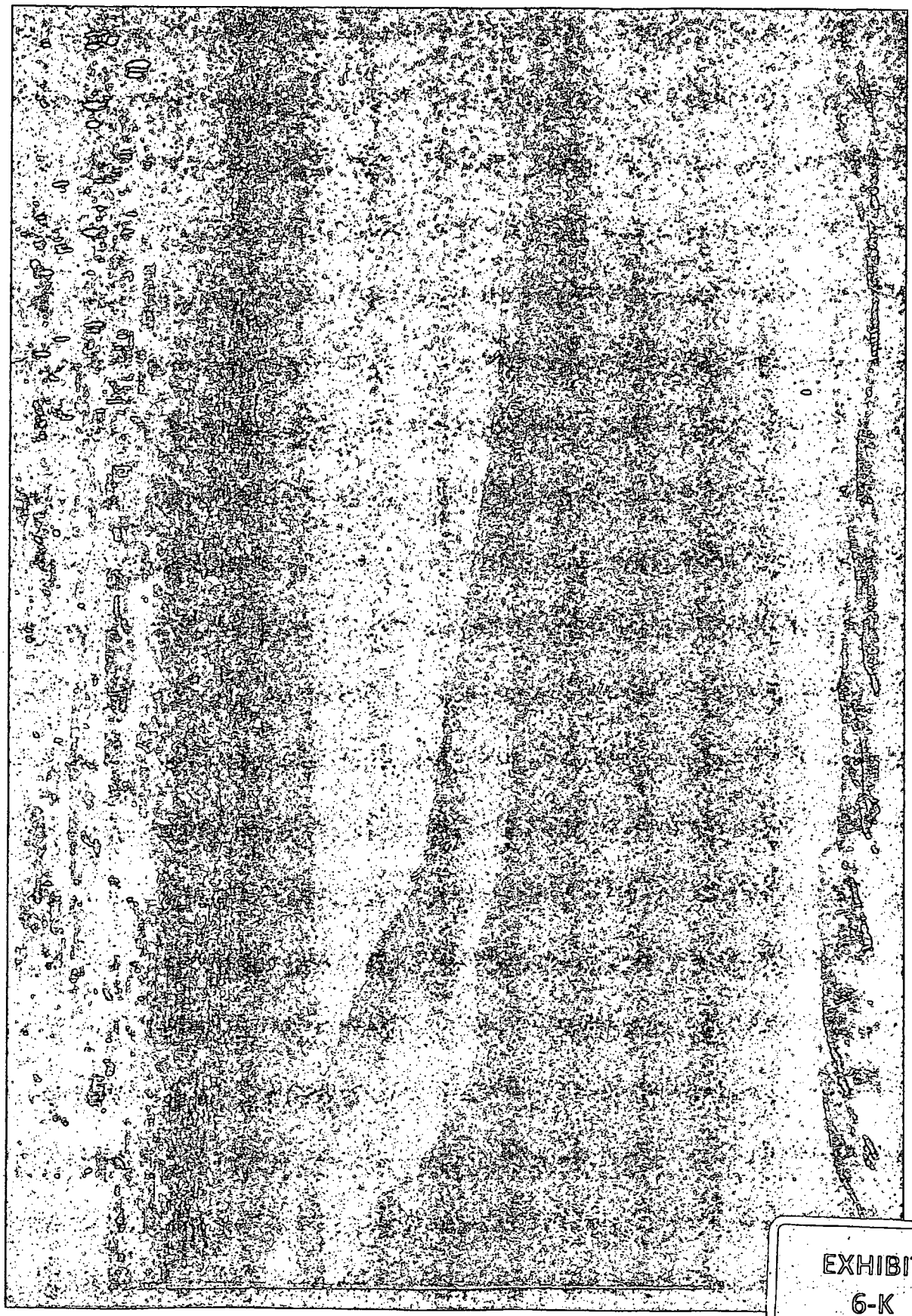

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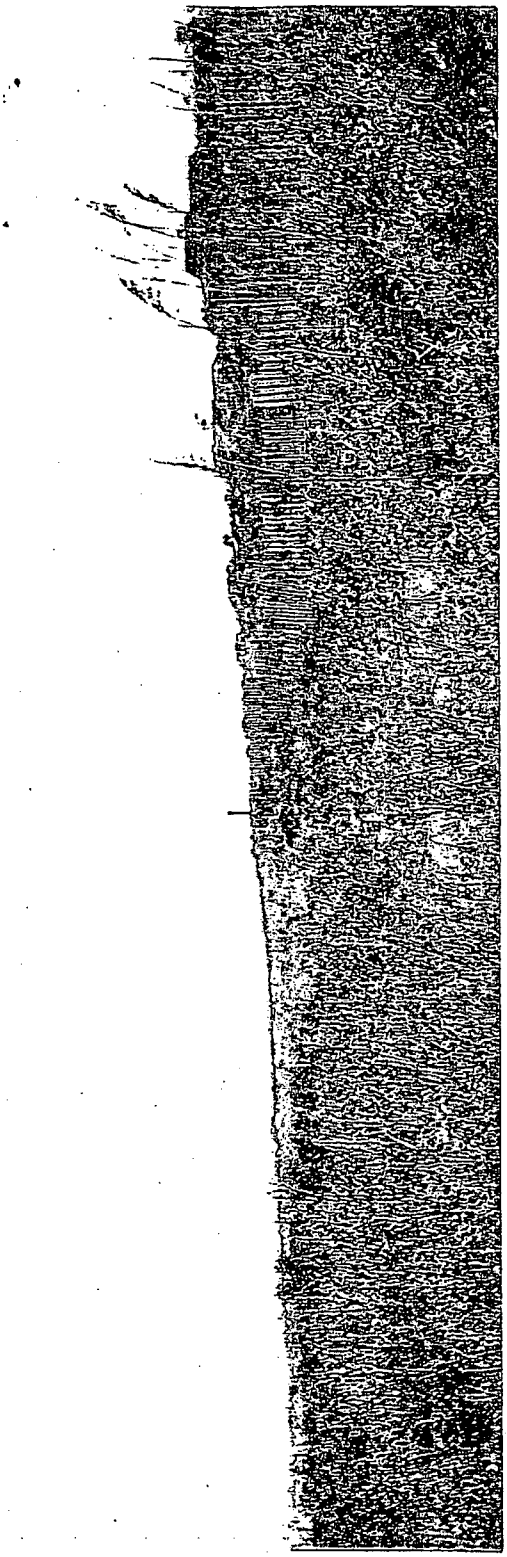

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7-A

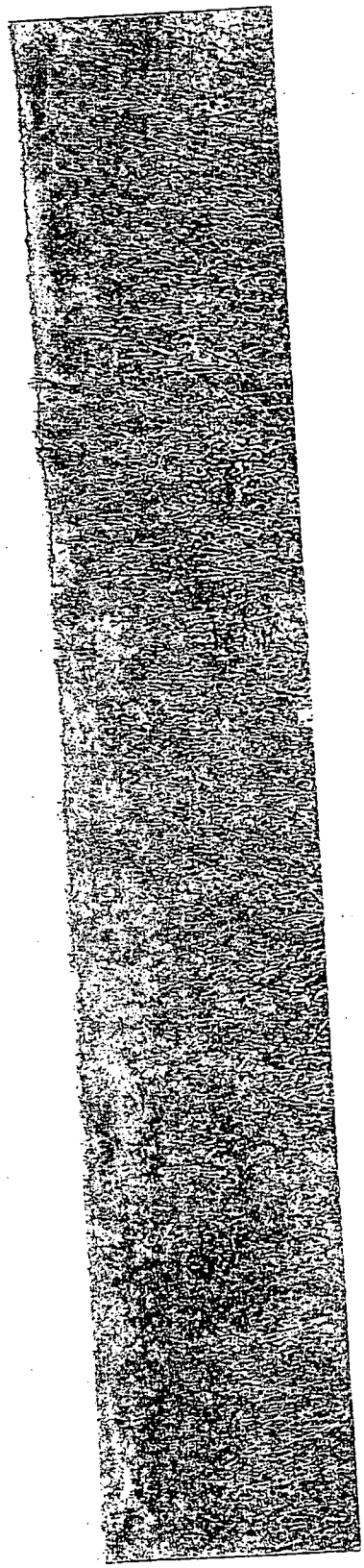

EXHIBIT
7-B

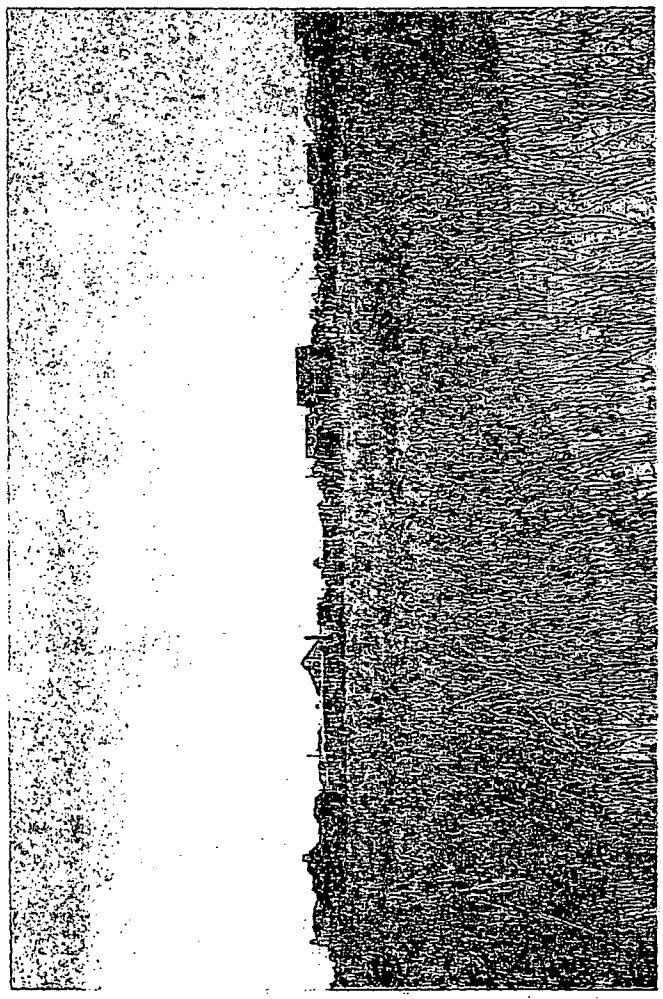

EXHIBIT
7-C

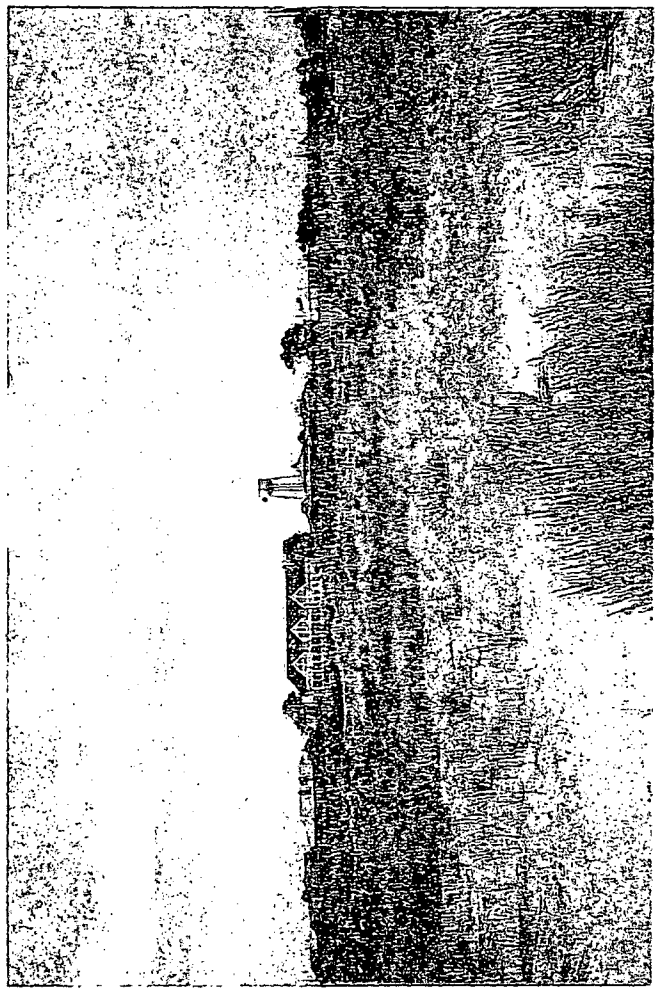

EXHIBIT
7-D

EXHIBIT
7-E

EXHIBIT
7-F

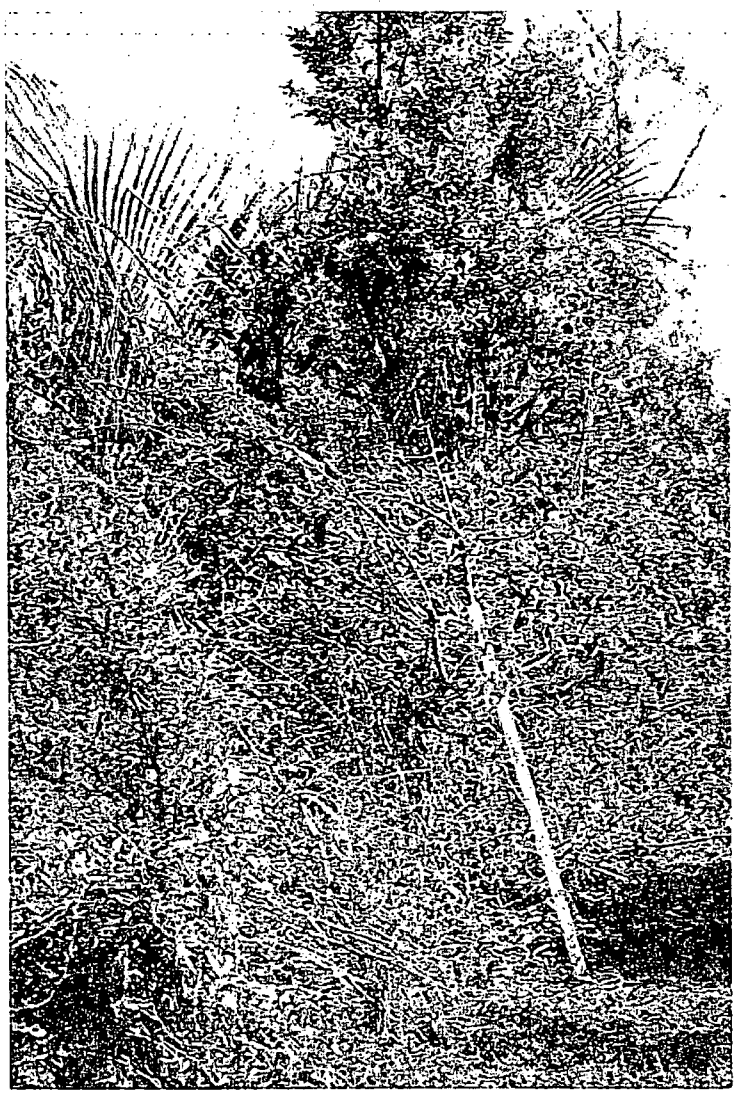

EXHIBIT
8-A

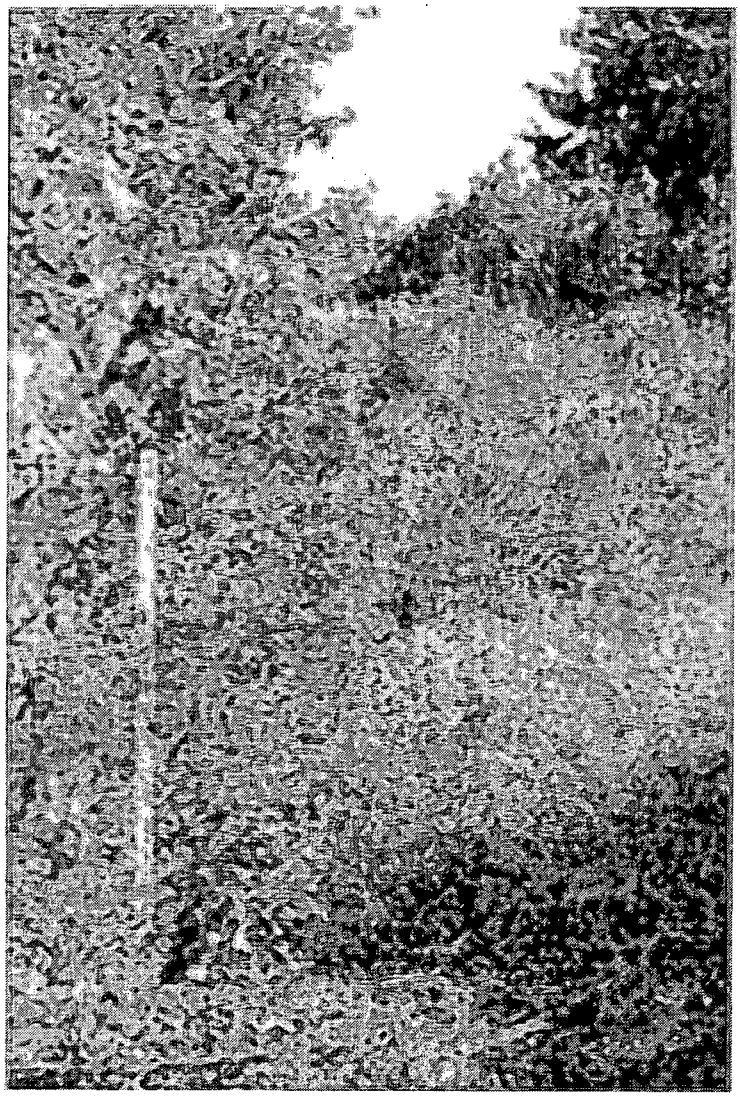

EXHIBIT
8-B

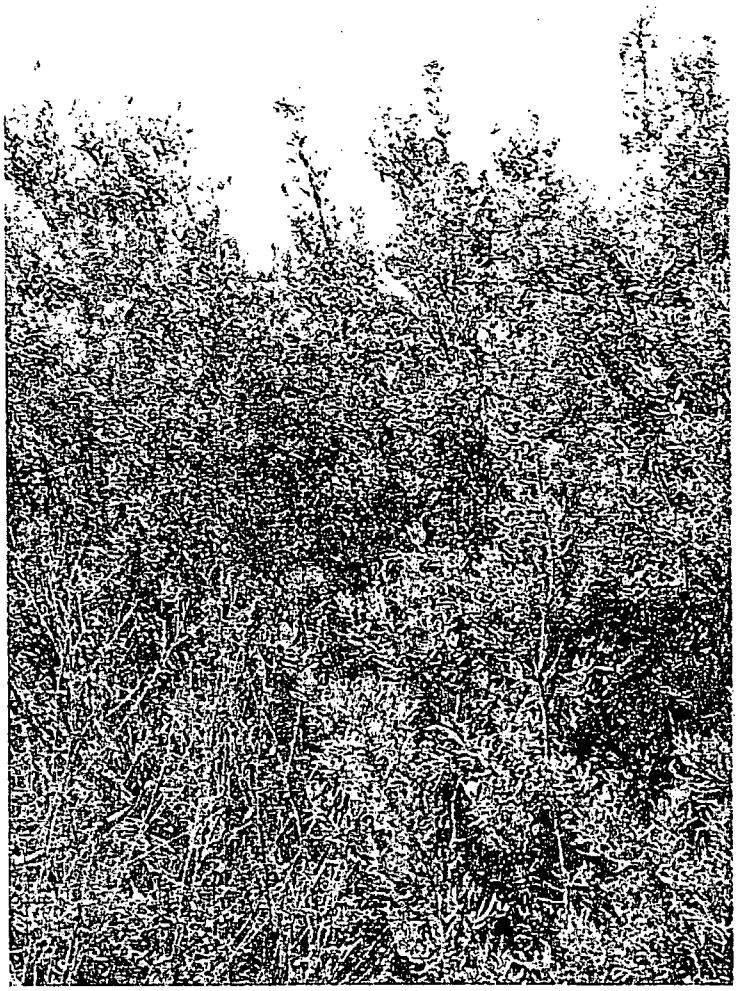

EXHIBIT
8-C

EXHIBIT
8-D

EXHIBIT
8-E

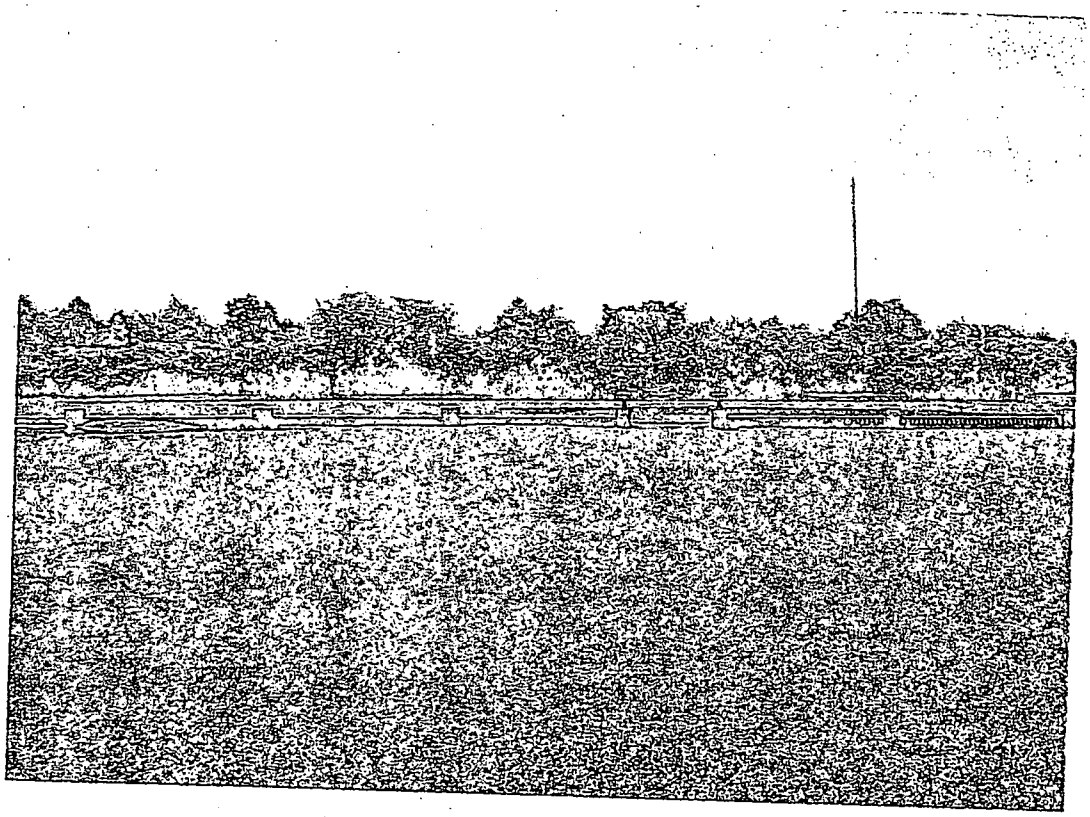

EXHIBIT
8-F

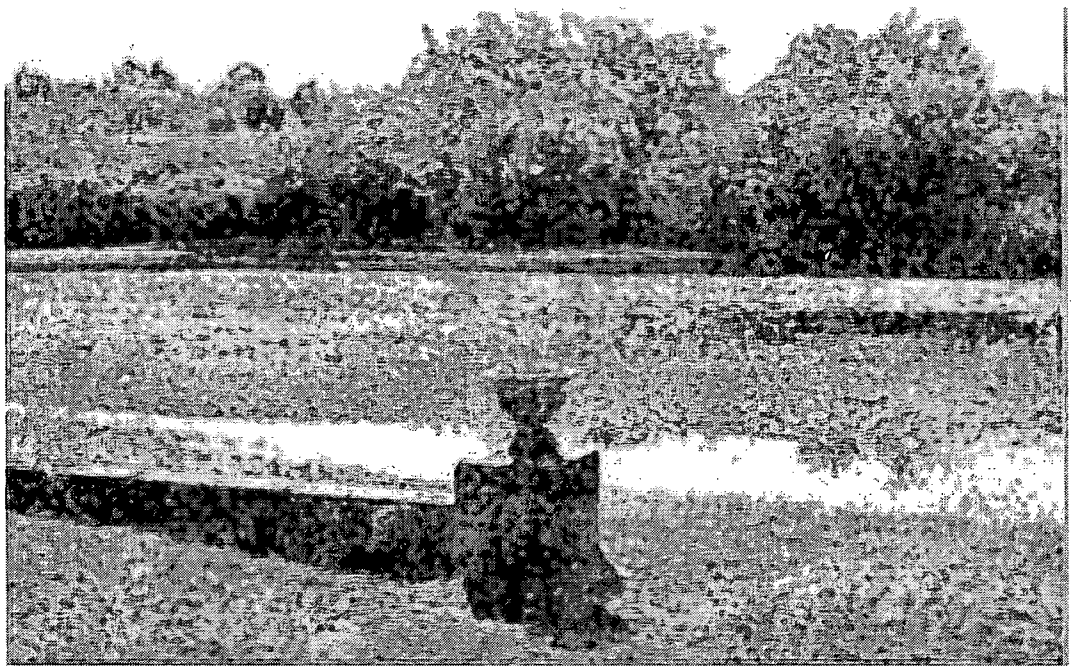

EXHIBIT
8-G

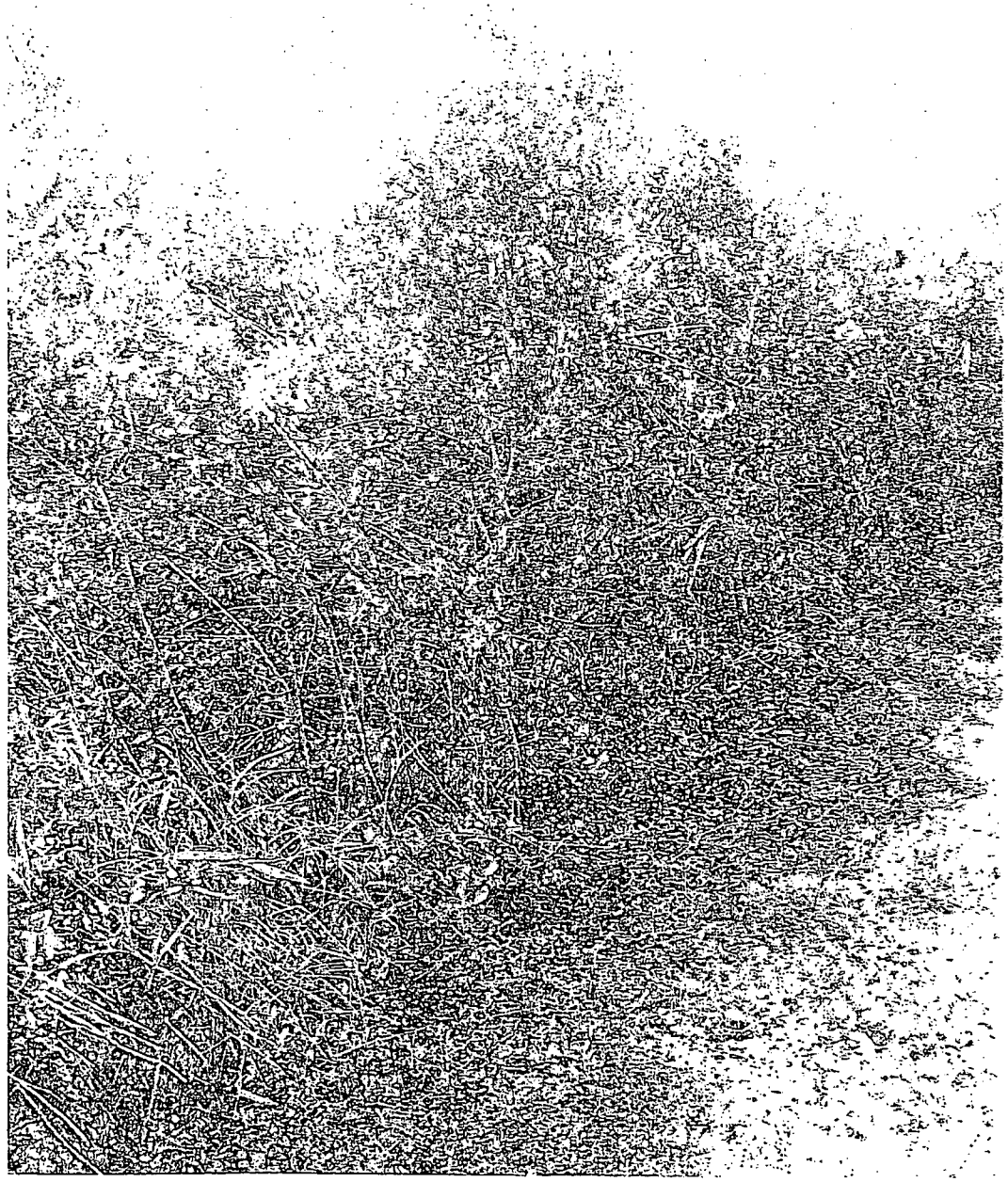

EXHIBIT
8-H

EXHIBIT
8-I

EXHIBIT
8-J

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN McQUEENEY
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

June 10, 2010

I certify that the attached documents are a true copy of a portion of the 1981 Code Book for the Town of Sullivan's Island:

Preface
Adoption of Code
Table of Contents
Chapter 1 – General Provisions (Sections 1.1 – 1.5)
Chapter 21 – Zoning (Sections 21.33 – 21.41)

Ellen McQueeney, Town Clerk
Town of Sullivan's Island

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

EXHIBIT
9

E. P. STITH 10-45-604

THE CODE OF THE TOWN

OF

SULLIVAN'S ISLAND, SOUTH CAROLINA

The General Ordinances of the Town

PUBLISHED BY ORDER

OF

THE TOWN COUNCIL

1981

of Sullivan's Island and that they provide town citizens as well as visitors, with countless hours of pleasurable activity and rest and relaxation, which is important to the goal of public health, safety and welfare; further, that the boundaries of these areas are constantly shifting over unpredictable periods of time, in that they are composed of sand dunes and vegetation that ceaselessly change, and that these areas are prone to flooding, and, therefore, not suitable to development for any purpose; further, that the Town of Sullivan's Island originated as a health resort for all the people of the State of South Carolina, and that these areas are vital to that purpose, and useful for that purpose only so long as they remain in a natural, undeveloped condition subject to the changing tides; further, that these areas, left in their natural state, provide protection to adjoining landowners and their property from the hazards of high tides and floods caused by hurricanes, tropical storms and seasonal tides; further, that the construction of the Santee-Cooper Diversion Canal and subsequent changes in the volume of water flowing through Charleston Harbor may cause further changes of an unknown nature upon the shoreline of Sullivan's Island, all of which the Town Council find to be a threat to all of the residents and property owners of the Town. Further, the Town Council finds that this area is of a particular beauty in its natural state so as to provide aesthetic value necessary to the public health, safety and welfare of island residents and visitors, and in keeping with the historic uses of Sullivan's Island. (8-1-77 and 8-21-78, §675)

Sec. 21-38. Uses in RC districts.

These areas shall be preserved in their natural state, except for the trimming, pruning and cutting of bushes and trees as provided in Section 21-39 below, as an area of recreation and conservation for the purpose of protecting the ecology, the adjoining property, and the environment, and enhancing and protecting the safety and welfare of the Town and its residents. Further, any activity shall be prohibited in these areas which would detract from their natural state, including, but not limited to, the activities stated in Section 21-39, so as to maintain this natural state for the public enjoyment and as protection for the Town and all of its citizens against the dangers and erosion as delineated in Section 21-37, et seq. (8-1-77 and 8-22-78, §676; 10-20-80, §1)

Sec. 21-39. Area RC-1 restrictions.

There shall be no construction of any type, no destruction of vegetation (except trimming, cutting and pruning of bushes and trees as provided in this section), and no man-made changes of topography in an RC-1 area. The Town Council may establish a program pursuant to which citizens may apply to the Town for permission to prune, trim and cut bushes and trees in the RC-1 area as follows:

A. When the Zoning Administrator finds as a fact that bushes and trees create a hazard to the health, safety and welfare of the Town in a particular area due to density, mosquito breeding, or standing water, then upon application of a citizen, or on his own initiative, the Zoning Administrator may issue a permit to a citizen or to the Town to prune or trim the bushes or trees in the RC-1 area, provided, however, that

1. the program include a numbered permit system under

the supervision of the Zoning Administrator and,

2. in the area when fresh water collects naturally and contributes to the breeding of mosquitos, the vegetation may be cut and maintained to facilitate the work of the mosquito abatement program,

3. these areas may be joined by cleared paths up to eight (8) feet wide to facilitate access by mosquito abatement personnel and to serve as a fire break, and

4. in the areas where the density of the vegetation shall be found to be a hazard to the safety, welfare, or health, the vegetation may be thinned to one substantial tree, bush or shrub for each six (6) square yard area, more or less; and

5. in those areas where the height of trees or bushes are deemed objectionable, the trees or bushes may be pruned to a height of no less than three (3) feet, provided that the cumulative effect of the trimming, cutting or pruning shall not be detrimental to the safety, welfare, and health of the people of the Town.

B. The Zoning Administrator shall grant a permit upon the proper application of the adjacent property owner with due regard for existing climatic conditions, the season of the year and the effect of the cumulative trimming, pruning and cutting, and upon the condition that the permittee shall remove the debris to the intersection of a paved road and a beach access or, upon specific approval and direction, may feed the debris to a Chipper and deposit the accumulation of vegetation in the fresh water basins, and shall complete all work within fifteen (15) days of the issuance of the permit.

C. The Town Council may direct Town employees to trim the bushes and trees to such an extent that access to the beach for emergency vehicles and visitors on foot may continue. The Town may continue to keep the present public walkways open; however, in no case shall these access ways be artificially leveled. No drainage of water to the beach other than natural drainage shall be allowed.

(8-1-77, 8-21-78, 10-20-80, §676.1)

Sec. 21-40. Area RC-2 restrictions.

There shall be no construction of any type, no destruction of vegetation, except trimming, cutting and pruning of back beach bushes and trees as

Andy Benke
Town of Sullivan's Island
1610 Middle Street
Sullivan's Island, S.C. 29482

Re: Cutting and Pruning of Vegetation in front of 2513 Atlantic Avenue

Dear Andy:

I would request that the Town give me a permit to cut all vegetation to 3 ft. in front of my residence at 2513 Atlantic Avenue as was specifically authorized and allowed by Section21-39(A)(5) of Sullivan's Island Town Code and Ordinances (ratified 1981).

Sincerely,

Nathan J. Bluestein

Dr. EttaLeah C. Bluestein

EXHIBIT 10

2411 Atlantic Avenue
Sullivan's Island, SC 29482
June 23, 2010

Andy Benke
Town of Sullivan's Island
1610 Middle Street
Sullivan's Island, SC 29482

Re: Cutting and Pruning of Vegetation in front of 2411 Atlantic Avenue

Dear Mr. Benke:

I would request that the Town issue us a permit to cut all vegetation to three (3) feet in front of our residence at 2411 Atlantic Avenue as was specifically authorized and allowed by §21-39(A)(5) of the Sullivan's Island Town Code and Ordinances (ratified 1981).

Sincerely,

Theodore H. and Karen K. Albenesius

Theodore H. and Karen K. Albenesius

EXHIBIT
11

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
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LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN McQUEENEY
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

June 21, 2010

Mr. Nathan J. Bluestein
EttaLeah C. Bluestein
2513 Atlantic Avenue
Sullivan's Island, SC 29482

In reference: Cutting and Pruning at 2513 Atlantic Avenue

Dear Mr. and Dr. Bluestein,

Thank you for your letter of June 15, 2010 requesting a permit to cut the vegetation in front of your residence.

You may have cited an older version of the zoning ordinance when requesting permission to trim and prune on Town property. Under the current ordinance, Section 21-71C(1)-(5) will define the area where cutting is allowed, specify the cutting season, list the trees and shrubs that may be trimmed and pruned and explain the terms under which cutting may occur.

Unfortunately your request does not meet the requirements of Section 21-71C; and, therefore, cannot be issued.

With kind regards, I am

Sincerely,
TOWN OF SULLIVAN'S ISLAND

Randy Robinson
Zoning Official

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

EXHIBIT
12

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
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GREG GRESS
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DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN McQUEENEY
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

June 24, 2010

Mr. Theodore H. Albenesius
Ms. Karen K. Albenesius
2411 Atlantic Avenue
Sullivan's Island, SC 29482

(By Certified Mail Receipt 7009-2250-0000-9303-7782)

In reference: Cutting and Pruning at 2411 Atlantic Avenue

Dear Mr. and Mrs. Albenesius,

Thank you for your letter of June 23, 2010 requesting a permit to cut the vegetation in front of your residence.

You may have cited an older version of the zoning ordinance when requesting permission to trim and prune on Town property. Under the current ordinance, Section 21-71C(1)-(5) will define the area where cutting is allowed, specify the cutting season, list the trees and shrubs that may be trimmed and pruned and explain the terms under which cutting may occur.

Unfortunately your request does not meet the requirements of Section 21-71C; and, therefore, cannot be issued.

With kind regards, I am

Sincerely,
TOWN OF SULLIVAN'S ISLAND

Randy Robinson
Zoning Official

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

EXHIBIT
13

HARTNETT REALTY CO., INC.

APPRAISERS BROKERS CONSULTANTS

Established 1947

Thomas F. Hartnett, BIC, GAA, Certified General Appraiser
Thomas F. Hartnett, Jr., Certified General Appraiser
Janet T. Rughelmer, Certified General Appraiser
Charles F. Middleton, MAI, CCIM, Certified General Appraiser
Edward D. Izard, Certified General Appraiser
William S. Smith, Real Estate Sales

134 Meeting Street, Suite 120
Post Office Box 221
Charleston, SC 29402
843-723-7222
843-723-9403 Fax
www.hartnettrealty.com

December 11th, 2009

Dear Sullivan's Island Residents:

In the event you were not present at the December 7th, 2009 meeting of the Sullivan's Island Town Council, I presented the economic impact that the loss of view (and essentially the loss of front beach status) would have on real estate values.

The bottom line is, front beach properties will be reduced in value by over $ 1,000,000 with the loss of view. Proportionately, as you go back from the front beach, every row of properties will be reduced in value; the second row by approximately $ 750,000, third row by approximately $ 500,000, and the fourth row by approximately $ 250,000.

Hopefully my presentation to Town Council will be available on the town's website at some point in time. I don't believe, as of this writing, it has been posted. However, the town does post the audio recordings of its' council meetings.

The town's website is www.sullivansisland-sc.com. If this shocking economic reality does not spark your and your neighbor's interest in this subject matter, I do not know what will. I am dumbfounded as to how the town can expect to operate financially if it allows property values to be so significantly reduced and thus tax revenues to its' treasury be reduced.

I hope to see you at the December 15th meeting.

Thank you for allowing me to be of service to you and your neighbors.

Respectfully submitted,

Thomas F. Hartnett, GAA, CRB
SC Certified General Real Estate Appraiser

EXHIBIT 14

CSE
COASTAL SCIENCE & ENGINEERING
PO BOX 8056 COLUMBIA SC 29202 • TEL 803-799-8949 • FAX 803-799-9481 • EMAIL cse@coastalscience.com

February 3, 2009

Mr. Andy Benke
Town of Sullivan's Island
1610 Middle Street
Sullivan's Island SC 29482

TEL: 843-883-5726
FAX: 843-883-3009
EMAIL: abenke@sullivansisland-sc.com

RE: Draft Report – Accreted Land Management Plan – Sullivan's Island [CSE 2253]

Dear Mr Benke:

On behalf of the Team of CSE, Sabine & Waters, and Dewberry, I am pleased to enclose six (6) copies of our draft report, "Accreted Land Management Plan – Sullivan's Island". This is marked as second draft (January 2009) because it follows our earlier version we circulated among the Team and your office. The present version includes substantial additions in Section 6 and revisions in other sections. I hope you find the draft sufficiently complete so that the council can initiate a series of community forums and discuss the advantages and disadvantages of various alternatives.

We have prepared an "opinion matrix" (Table 6.1) and have included extra copies of the form for purposes of assisting you and your town council in identifying objectives to be emphasized. As we state in the report, the final ALMP may have to emphasize alternate strategies depending on the locality. The purpose of the draft report is to help the community narrow the range of choices for land management.

Please contact us at any time if you have any question about our findings. Thank you again for the opportunity to prepare this report.

Yours truly,

Coastal Science & Engineering (CSE)

Timothy W Kana PhD PG
Project Director

cc: Sabine & Waters
Dewberry

EXHIBIT
15

TABLE 6.1. Opinion matrix regarding various issues with the accreted land and your opinion regarding the suitability of various alternatives.

1 = Important	2 = Neutral	3 = Not Important	Leave Blank If Not Applicable

	Alternative 1	Alternative 2	Alternative 3	Alternative 4	
Issue	Do Nothing	Continue Present Practice	Expanded Vegetation Manipulation	Modify Topography & Expanded Vegetation Manipulation	Notes
Barrier Island Ecology & Habitat Diversity					
Storm Damage Reduction					
Ocean Views					
Beach Access & Public Safety					
Fire					
Pests					
Property Values					
Cost of Implementation					
Construction Requirements					

PROPOSED SURVEY OF SULLIVAN'S ISLAND RESIDENTS

A. Please write "yes" or "no" after the following questions:

1. Do you favor allowing cutting and pruning of vegetation on the town's protected dune property in order to afford homeowners a view of the ocean? _____

LATER

B. Please assign a numerical value to the following features of the town's protected dune property (0=not important; 1=fairly important; 2=important; 3=very important; 4=extremely important):

1. View of the ocean _____

2. Storm buffering\erosion control _____

3. Wildlife habitat _____

4. Green space _____

C. Other comments

EXHIBIT 16

Town of Sullivan's Island Accreted Land Management

Management Plan Element Rating Form

Name: _____

Address: _____

Email: _____

Instructions:

1. **IMPORTANCE COLUMN:** Indicate how IMPORTANT this Element is to You using the following scale:
   - 1 = Extremely Important
   - 2 = Moderately Important
   - 3 = Somewhat Important
   - 4 = Not Important

2. **PREFERRED MANAGEMENT OPTION:** Indicate the Management Option that has the most favorable impact on each Element by checking the box under that Element. Please focus on which option would have the best impact *on this Element, not your overall sentiment about the option in general.*

ELEMENT	ELEMENT IMPORTANCE (1-4 rating)	MANAGEMENT OPTIONS				NOTES
		Leave Untouched in Natural State	Continue Present Practice	Expanded Vegetation Manipulation	Modify Topography & Expanded Vegetation Manipulation	
Future Land Stability						
Accreted Land Habitats						
Role of Biodiversity						
Storm Impacts						
Fire Hazards						
Pest Control						
Views, Beach Access and Public Safety						

Public Meeting 8/4/2009

Please return your questionnaire at the end of the Public Meeting on August 4, 2009. Otherwise, please return it to Town Hall (1610 Middle Street) or email Lisa Darrow at ldarrow@sullivansisland-sc.com. Questions? Call (843) 883-3198
More information is available at www.sullivansisland-sc.com.

EXHIBIT 17

Andy Benke

From: Tim Kana [tkana@coastalscience.com]
Sent: Thursday, January 21, 2010 4:03 PM
To: Andy Benke
Subject: Re: Resident Correspondence - Hood Letter Dated 011810

Understood. Thanks, Andy. TK

Timothy W. Kana, PhD
President
Coastal Science & Engineering

PO Box 8056
Columbia SC 29202-8056
803-799-8949 - Office
803-799-9481 - Fax
803-361-3583 - Mobile
www.coastalscience.com

Andy Benke wrote:
Tim,

I reviewed a letter from Robert Hood, Esq. to Mayor Smith which was copied to you and wherein he indicated that *"I am sending these letters to the consultant so he will have the input of the vast majority of the residents of Sullivan's Island who are very involved and concerned about how their breezes and ocean views will be preserved and, most importantly, their property values."*

As we move forward, this and any other correspondence from individuals should not influence the conceptual plan which is prepared by you for the Town. Moreover, any time spent discussing the Accreted Land Management Plan or reviewing information with/from anyone but staff or members of Council should not be for the account of the Town.

Thanks,
Andy

Andy Benke
Town Administrator
Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482
Direct Telephone: 843-883-5726
Mobile Telephone: 843-568-8740
Facsimile: 843-883-3009
Email address: abenke@sullivansisland-sc.com
Web address: www.sullivansisland-sc.com

EXHIBIT 18

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged and confidential. If the reader of this message is not the intended

recipient, you are hereby notified that any disclosure, distribution, or coping of this information is strictly prohibited. If you have received this transmission in error, please notify the sender by calling (843) 883-5726.

Andy Benke

From: mike perkis [michaelperkis@yahoo.com]
Sent: Wednesday, January 20, 2010 7:44 PM
To: Andy Benke
Subject: Fw: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
Attachments: Hood,Robert Ltr (ALMP) 1-18-2010 & Memo (rcvd 1-20-2010).pdf

Andy, Is this correspondence available to the public ? There might be island residents that would like to examine and provide a different point of view.

Mike
--- On **Wed, 1/20/10, Carl Smith** ***<cjenningssmith1908@yahoo.com>*** wrote:

From: Carl Smith <cjenningssmith1908@yahoo.com>
Subject: Fw: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
To: "mike perkis" <michaelperkis@yahoo.com>, "Pat Oneil" <oneilp@musc.edu>
Date: Wednesday, January 20, 2010, 6:11 PM

FYI
carl

--- On **Wed, 1/20/10, ldarrow** ***<ldarrow@sullivansisland-sc.com>*** wrote:

From: ldarrow <ldarrow@sullivansisland-sc.com>
Subject: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
To: "'Carl Smith'" <cjenningssmith1908@yahoo.com>
Cc: abenke@sullivansisland-sc.com
Date: Wednesday, January 20, 2010, 3:28 PM

Mayor:

We received a packet of correspondence from Mr. Hood in today's mail. Attached is the cover letter and referenced memorandum (both dated Jan 18, 2010). Mr. Hood also sent copies of all the older correspondence he received.

Andy has reviewed the cover letter.

Please let me know if you want me to duplicate the full packet to distribute to Council (paper and/or email).

Thanks,

Lisa Darrow

Asst. to Administrator/Human Resources

Town of Sullivan 's Island

1610 Middle Street / PO Box 427

Sullivan's Island , SC 29482

Direct: (843) 883-5744

Fax: (843) 883-3009

Email: ldarrow@sullivansisland-sc.com

www.sullivansisland-sc.com

cc: Andy Benke

Andy Benke

From: O'Neil PhD, Patrick M [oneilp@musc.edu]
Sent: Wednesday, January 20, 2010 7:37 PM
To: 'Carl Smith'; mike perkis
Cc: 'Andy Benke'
Subject: RE: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010

Andy, can you pls communicate this to Mr. Kana?
Thx
pat

From: Carl Smith [mailto:cjenningssmith1908@yahoo.com]
Sent: Wednesday, January 20, 2010 7:36 PM
To: mike perkis; O'Neil PhD, Patrick M
Cc: 'Andy Benke'
Subject: RE: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010

In answer to your second question I agree with your statement.

--- On **Wed, 1/20/10, O'Neil PhD, Patrick M <*oneilp@musc.edu*>** wrote:

From: O'Neil PhD, Patrick M <oneilp@musc.edu>
Subject: RE: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
To: "'Carl Smith'" <cjenningssmith1908@yahoo.com>, "mike perkis" <michaelperkis@yahoo.com>
Cc: "'Andy Benke'" <abenke@sullivansisland-sc.com>
Date: Wednesday, January 20, 2010, 7:27 PM

What is the 'file" he is requesting?

Should we tell Kana explicitly that this and any other correspondence from citizens should not influence the plan they draw up at this point, and remind him that any time he cares to spend in communications with citizens is at his own expense and should not be attributed to our project?

pat

From: Carl Smith [mailto:cjenningssmith1908@yahoo.com]
Sent: Wednesday, January 20, 2010 6:12 PM
To: mike perkis; O'Neil PhD, Patrick M
Subject: Fw: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010

FYI

carl

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Asst. to Administrator/Human Resources

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cc: Andy Benke

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To: "'Carl Smith'" <cjenningssmith1908@yahoo.com>, "mike perkis" <michaelperkis@yahoo.com>
Cc: "'Andy Benke'" <abenke@sullivansisland-sc.com>
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carl

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Thanks,

Lisa Darrow

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Fax: (843) 883-3009

Email: ldarrow@sullivansisland-sc.com

www.sullivansisland-sc.com

cc: Andy Benke

Andy Benke

From: mike perkis [michaelperkis@yahoo.com]
Sent: Wednesday, January 20, 2010 7:34 PM
To: 'Carl Smith'; Patrick MO'Neil PhD
Cc: 'Andy Benke'
Subject: RE: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010

2nd question - absolutely !! Mike

--- On **Wed, 1/20/10, O'Neil PhD, Patrick M <*oneilp@musc.edu*>** wrote:

From: O'Neil PhD, Patrick M <oneilp@musc.edu>
Subject: RE: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
To: "'Carl Smith'" <cjenningssmith1908@yahoo.com>, "mike perkis" <michaelperkis@yahoo.com>
Cc: "'Andy Benke'" <abenke@sullivansisland-sc.com>
Date: Wednesday, January 20, 2010, 7:27 PM

What is the 'file" he is requesting?

Should we tell Kana explicitly that this and any other correspondence from citizens should not influence the plan they draw up at this point, and remind him that any time he cares to spend in communications with citizens is at his own expense and should not be attributed to our project?

pat

From: Carl Smith [mailto:cjenningssmith1908@yahoo.com]
Sent: Wednesday, January 20, 2010 6:12 PM
To: mike perkis; O'Neil PhD, Patrick M
Subject: Fw: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010

FYI

carl

--- On **Wed, 1/20/10, ldarrow <*ldarrow@sullivansisland-sc.com*>** wrote:

From: ldarrow <ldarrow@sullivansisland-sc.com>
Subject: Letter from Robert Hood with Memorandum (dated 1-18-2010) rcvd 1-20-2010
To: "'Carl Smith'" <cjenningssmith1908@yahoo.com>
Cc: abenke@sullivansisland-sc.com

Date: Wednesday, January 20, 2010, 3:28 PM

Mayor:

We received a packet of correspondence from Mr. Hood in today's mail. Attached is the cover letter and referenced memorandum (both dated Jan 18, 2010). Mr. Hood also sent copies of all the older correspondence he received.

Andy has reviewed the cover letter.

Please let me know if you want me to duplicate the full packet to distribute to Council (paper and/or email).

Thanks,

Lisa Darrow

Asst. to Administrator/Human Resources

Town of Sullivan 's Island

1610 Middle Street / PO Box 427

Sullivan's Island , SC 29482

Direct: (843) 883-5744

Fax: (843) 883-3009

Email: ldarrow@sullivansisland-sc.com

www.sullivansisland-sc.com

cc: Andy Benke

O'Neil PhD, Patrick M

From: RACKET SPE [racketspe@aol.com]
Sent: Wednesday, April 22, 2009 2:46 PM
To: MARY WATSON; 'Watson Mary Jane'; 'Buddy Howle'; 'Everett Presson'; 'Mary Jane Watson at Work'; 'Larry Dodds'; O'Neil PhD, Patrick M; 'Andy Benke'; 'Carl Jennings Smith'; 'Mike Perkis'
Subject: Re: Coastal Science

Council discussed this at the presentation and decided to leave the report as presented. I do not think Council should make value judgments and edit a consultant's report in this manner. We hired a consultant for his opinion as an expert and remember, he and his firm are the experts. That is why we hired him. If his report generates discussion of this and other issues, all the better. We should welcome an open discussion of all issues and not act to suppress an issue before the public hearing. I am strongly opposed to "editing" the consultant's report. This issue is already in the public record as a result of comments at our last Council meeting. Full participation of all residents in this discussion will occur at the public hearing. I do not think editing of the consultant's report on a matter of substance is appropriate via email. I trust our residents to reach good, reasoned conclusions after full and open discussion of all issues.

Jerry

In a message dated 04/22/09 09:37:35 Eastern Daylight Time, MARY_WATSON@charleston.k12.sc.us writes:

> Andy,
>
> My only edit or revision for the land management plan is to not include the section on property values.
> If we want to include that I feel that someone with more expertise in that area would be better qualified.
>
> Have a great day,
>
> Mary Jane

Big savings on Dell XPS Laptops and Desktops!

EXHIBIT 19

DEF R-RFP 009404

O'Neil PhD, Patrick M

From: Buddy Howle [bhowle@Carolinainternational.com]
Sent: Wednesday, April 22, 2009 3:55 PM
To: Everett Presson; MARY WATSON
Cc: Kaynard, Jerry; Watson Mary Jane; Larry Dodds; O'Neil PhD, Patrick M; Andy Benke; Carl Jennings Smith; Mike Perkis
Subject: RE: Coastal Science

I don't think we instructed these folks to address this issue or not to address this issue. I think they put it in the report because they think it's important.

In my business, I often give advice on issues that my clients don't specifically mention. I do this because I think it's important, and I want to get my customers thinking about these issues. Having the right answer is not as critical at the beginning of the process. What is critical at the beginning is to make sure all the issues are recognized.

-----Original Message-----
From: epresson@gmail.com [mailto:epresson@gmail.com] **On Behalf Of** Everett Presson
Sent: Wednesday, April 22, 2009 1:33 PM
To: MARY WATSON
Cc: Kaynard, Jerry; Watson Mary Jane; Buddy Howle; Larry Dodds; Patrick O'Neil; Andy Benke; Carl Jennings Smith; Mike Perkis
Subject: Re: Coastal Science

I do not think the value part ought to come out. While certainly not the most important part of the plan or what we will be making our decisions on, whatever we do out there will have an effect on property values. Each person on council is smart enough to take the information and if they think the information is not relevant then discard it in your mind. We paid for it, I want it. Why are we as a council deciding what should or should not be include in an experts report. By the way this is not a big issue for me. I think we will get more trouble for monkeying with the report than by leaving the info in.

On Wed, Apr 22, 2009 at 9:36 AM, MARY WATSON <MARY_WATSON@charleston.k12.sc.us> wrote:
Andy,

My only edit or revision for the land management plan is to not include the section on property values. If we want to include that I feel that someone with more expertise in that area would be better qualified.

Have a great day,

Mary Jane

--
Everett Presson, Broker
Carolina One Real Estate
1400 Palm Boulevard

Isle of Palms, SC 29451
843-343-6200 Mobile
843-886-8110 Office
epresson@carolinaone.com
www.everettpresson.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodor Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
	)	Answer and Affirmative Defenses on behalf of all Defendants to Second Amended Complaint
Plaintiffs,	)	
	)	
Versus	)	
	)	JURY TRIAL DEMANDED
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants.	)	

FILED
2013 DEC 16 PM 2:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Now come the Defendants, in response to the allegations contained within the Plaintiffs' complaint, to answer and respond as follows[1] [2]:

FOR A FIRST DEFENSE

1) The Defendants admit so much of the allegations contained in Paragraph 1 of the Complaint as claim that the Plaintiffs Bluestein are residents of Sullivan's Island residing at 2513 Atlantic Avenue. The Defendants further admit that the Plaintiffs Albenesius are property owner residents of Sullivan's Island residing at 2411 Atlantic Avenue.

2) Regarding the allegations of Paragraph 2 of the Complaint, the Defendants admit that the Town is a South Carolina Municipality and state that the Town operates under the Council form of Government.

3) The Defendants admit the allegations contained in Paragraph 3 of the Complaint, on the understanding that the "real properties at issue in this lawsuit" are the so-called "Accreted

[1] Each and every allegation not expressly admitted herein is hereby expressly denied. The Defendants further hereby expressly deny any and all references to "vested property rights" contained within the Complaint.
[2] The Defendants are without sufficient information so as to form a belief regarding the allegations contained within footnote 1 of the Complaint and therefore deny the same. Further, the Defendants note that the copy of Exhibit 1 which they received is, for all intents and purposes, illegible.

Lands" and the fact that the role of its Mayor is that described in South Carolina law regarding the Council form of government rather than Strong Mayor.[3]

4) Paragraph 4 of the Complaint contains allegations of matters of law to which no response is required.

5) Paragraph 5 of the Complaint contains allegations of matters of law to which no response is required.

6) Regarding the allegations contained in Paragraph 6 of the Complaint, the Defendants admit only that venue is proper in Charleston County to the extent jurisdiction may exist.

7) The allegations of Paragraph 7 constitute a conclusion of law to which no response is required. In a more general sense, however, the Defendants would admit that the use and allocation of tax receipts are of *general* interest to residents. To the extent that Paragraph 7 is intended by Plaintiffs as an allegation of a basis for legal standing, or as an allegation of legally cognizable personal, specific interest such legal conclusion is denied.

8) The allegations of Paragraph 8 represent conclusions of law to which no response is required. To the extent that the allegations are intended as a basis for legal standing, such conclusion is specifically denied. In a more general sense, however, the Town would admit that *unlawful* expenditures of public funds are a matter of public importance (though the Defendants expressly deny any suggestion that unlawful/improper expenditures of funds have occurred.)

9) The allegations of Paragraph 9 of the Complaint are denied.

10) The allegations of Paragraph 10 of the Complaint are denied.

11) The allegations of Paragraph 11 of the Complaint are denied.

12) The allegations of Paragraph 12 of the Complaint are denied.

13) The allegations of Paragraph 13 of the Complaint are denied.

[3] The Defendants do not know what the term "municipal sources" relates to and therefore do not admit anything relating to that term.

14) Regarding the allegations of Paragraph 14 of the Complaint, the Defendants admit only that public accountability is a desirable, inherent feature of governments established pursuant to the constitution and laws of the State of South Carolina and that *lawful* activity by governments is similarly desirable. All other allegations are denied.

15) The allegations of Paragraph 15 of the Complaint state a conclusion of law to which no response is required and the Defendants therefore deny and demand strict proof thereof.

16) Regarding the allegations of Paragraph 16 of the Complaint, the paragraph contains legal conclusions to which no response is required. To the extent the Paragraph references or characterizes documents, the referenced documents (in their entirety) speak for themselves and the Defendants crave reference thereto in lieu of Plaintiffs' characterizations thereof.

17) Regarding the allegations of Paragraph 17, the Town would admit that on one or more occasions over the years property has been offered for sale to certain persons in certain locations on the island, but lacks sufficient information so as to form a belief regarding the specifics of the same as they would pertain to this lawsuit and therefore must deny the same.

18) Regarding the allegations of Paragraph 18, the Town would admit that on one or more occasions over the years property has been offered for sale to certain persons in certain locations on the island, but lacks sufficient information so as to form a belief regarding the specifics of the same as they would pertain to this lawsuit or the state of mind of any purchasers and therefore must deny the same in favor of strict proof thereof.

19) Regarding the allegations of Paragraph 19 of the Complaint, the Defendants admit that a 1980's Coastal Council study was conducted and assert that the document must speak for itself and thus deny the Plaintiffs' characterizations thereof.

20) Regarding the allegations of Paragraph 20 of the Complaint, the Defendants admit that the Town has taken measures to protect the Accreted Land from development, the property transfers took place, and that deed restrictions were involved. The Defendants are presently without sufficient information so as to form a belief regarding the correctness of the stated valuation and therefore must deny same.

21) Regarding the allegations of Paragraph 21 of the Complaint, the Defendants would admit that it transferred the Accreted Land to the Low County Open Land Trust ("LOLT") and that the LOLT is a non-profit dedicated to the preservation of scenic vistas and open space.

22) Regarding the allegations of Paragraph 22, the Defendants admit that they received back from the LOLT title to the Accreted Land with deed restrictions in place and that the LOLT has certain enforcement rights with respect to those deed restrictions. The Defendants would further admit that deed restrictions were specifically selected in lieu of a "conservation easement." The Defendants would also admit that the then-existing Town Council wished the restrictions / protections to exist into the future. Regarding Plaintiffs' excerpts or characterizations of certain documents the Defendants deny the same in favor of reference to the full documents.

23) Regarding the allegations of Paragraph 23, the Defendants would admit that money was raised to allow the Town to repurchase the land from the LOLT.

24) Regarding the allegations of Paragraph 24, the Defendants admit that the Town in or about 1990 concluded its fundraising efforts, paid the LOLT, and received title to the Accreted Land back from the Low Country Open Land Trust.

25) The Defendants are without sufficient information so as to form a belief regarding the allegations of Paragraph 25 and therefore deny same in favor of strict proof thereof.

26) The allegations of Paragraph 26 of the Complaint are admitted.

27) Regarding the allegations of Paragraph 27 of the Complaint, the Defendants would admit that on February 12, 1991, the Lowcountry Open Land Trust provided to the Town of Sullivan's Island a deed to the Accreted Land filed in Book K200, pg 496 *et seq.*

28) Regarding the allegations of Paragraph 28 of the Complaint, the referenced documents speak for themselves and the Defendants crave reference thereto in lieu of Plaintiffs' characterizations or excerpts thereof.

29) Regarding the allegations of Paragraph 29 of the Complaint, the Defendants admit that the town divided the land into eleven parcels.

30) The allegations of Paragraph 30 of the Complaint are admitted except that the Defendants note that there is no indication on the face of Exhibit 5 permitting determination of who took the photograph and thus demand proof of identity.

31) The allegations of Paragraph 31 of the Complaint are admitted.

32) Regarding the allegations of Paragraph 32 of the Complaint, the Defendants admit only that the documents attached to the Complaint as Exhibits 6 A through D appear to be undated aerial photos of the Accreted Land.

33) Regarding the allegations of Paragraph 33 of the Complaint, to the extent the allegations speak of "requirements", the documents speak for themselves and, in any event, no responses to conclusions of law are required. Regarding the attached photographs, the documents speak for themselves and the Defendants crave reference thereto in lieu of Plaintiffs' interpretations thereof (and further note, in any event, that the resolution of the photographs appears lacking.)

34) Regarding the allegations of Paragraph 34 of the Complaint, the Defendants are without sufficient information so as to form a belief and therefore deny the same.

35) The allegations of Paragraph 35 of the Complaint are admitted to the extent they allege that the Plaintiffs reside near the Accreted Land. Regarding Plaintiffs' interpretation of the photographs, the photographs speak for themselves. Accordingly, the Defendants crave reference to the same in lieu of Plaintiffs' characterizations thereof.

36) Regarding the allegations of Paragraph 36, the Defendants admit only that they exercised lawful authority to enact and enforce 1995 and 2005 ordinances.

37) Regarding the allegations of Paragraph 37 of the Complaint, the photographs speak for themselves. Accordingly, the Defendants crave reference to the same in lieu of Plaintiffs' characterizations thereof or conclusions based thereon.

38) Regarding the allegations contained within Paragraph 38 of the Complaint, the Defendants note that the referenced documents (in their entirety) speak for themselves and crave reference thereto rather than accepting the Plaintiffs' characterizations thereof. Any and all legal conclusions are denied.

39) Regarding the allegations of Paragraph 39, the Defendants admit that no referendum or City Council vote has been held to amend the deed restriction document relating to the property. The Defendants further admit that no City Council vote has been held to amend the deed restriction document relating to the property, though the Defendants note that they have passed / amended ordinance(s) regarding the subject property. The Defendants deny that any referendum / deed amendment vote has been required. All other allegations are denied.

40) Regarding the allegations of Paragraph 40, the documents (in their entirety) speak for themselves and the Defendants crave reference thereto in lieu of Plaintiffs' characterizations thereof.

41) The allegations of Paragraph 41 of the Complaint are admitted.

42) Regarding the allegations of Paragraph 42 of the Complaint, the Defendants deny the existence of the asserted "vested rights" and, with respect to references to various ordinances and documents, assert that the various ordinances and documents speak for themselves and should be relied upon in lieu of the Plaintiffs' characterizations of the same. Subject to the foregoing caveats, the Defendants admit that generally speaking cutting vegetation to a height of not less than three feet was in some circumstances allowed as of 1991.

43) The allegations of Paragraph 43 of the Complaint regarding any breach by the Defendants are denied. Regarding the characterization of the Town's ordinances, the Defendants assert that the ordinances, when read in their entirety, speak for themselves.

44) Regarding Paragraph 44 of the Complaint, the Defendants admit only so much as alleges that the Town considers from time to time additional land use amendments or management plans and that such consideration is ongoing.

45) The allegations of Paragraph 45 of the Complaint are denied.

46) Regarding the allegations of Paragraph 46 of the Complaint, the Defendants admit only that among competing proposals received have been proposals more restrictive than the Town's current ordinances / management plan. Regarding the substance of any proposals considered, those proposals / plans / documents should, in their entirety, speak for themselves.

47) Regarding the allegations of Paragraph 47 of the Complaint, the Defendants admit that the Plaintiffs Bluestein submitted the undated request document shown as Exhibit 10 to the Complaint. The Defendants further admit that on or about June 23, 2010, the Plaintiffs Albenesius submitted the request shown as Exhibit 11 to the Complaint.

48) The allegations of Paragraph 48 of the Complaint are admitted.

49) Many of the allegations of Paragraph 49 constitute conclusions of law to which no response is required. With respect to referenced ordinances, those ordinances speak for themselves and the Defendants' specifically crave reference to those ordinances in lieu of Plaintiffs' characterizations thereof. Regarding assertions of Plantiffs' subjective desires, the Defendants admit (upon information and belief) that the Plaintiffs desire to cut as described, but deny that they have any such right.

50) Regarding the allegations of Paragraph 50, the Defendants are without sufficient information so as to form a belief and therefore deny the same.

51) The allegations of Paragraph 51 of the Complaint are denied.

52) The allegations of Paragraph 52 of the Complaint are denied.

53) The allegations of Paragraph 53 of the Complaint are admitted.

54) Regarding the allegations of Paragraph 54 of the Complaint, the document speaks for itself and the Defendants crave reference thereto in lieu of Plaintiffs' characterization thereof.

55) Regarding the allegations of Paragraph 55 of the Complaint, the document speaks for itself and the Defendants crave reference thereto in lieu of Plaintiffs' characterization thereof.

56) Regarding the allegations of Paragraph 56, the document speaks for itself and the Defendants crave reference thereto in lieu of the Plaintiffs' characterizations thereof.

57) Regarding the allegations of Paragraph 57, the document cited as support for the allegations speaks for itself and the Defendants crave reference thereto in lieu of Plaintiffs' characterization thereof.

58) The allegations of Paragraph 58 of the Complaint are denied [4] [5]

59) Regarding the allegations of Paragraph 59 of the Complaint, the Defendants always appreciate constituent suggestions and would admit that they consider, and attempt to

[4] The allegations of Footnote 8 of the 2nd Amended Complaint are denied.

[5] Regarding the allegations of Footnote 9 of the 2nd Amended Complaint, the Defendants would admit that an attack occurred in recent years on or near the Accreted Land, but respectfully assert that such conduct should most properly be attributed to the criminal intent of the perpetrator rather than to the growth of plants.

advance, the overall health, safety and welfare of their citizens and environment. The Complaint's reference to Paragraph 57(j) is not understood by the Defendants and is therefore denied.

60) The allegations of Paragraph 60 of the Complaint are conclusions of law to which no response is required. To the extent response is required the Defendants deny Plaintiffs' characterization to the extent inconsistent with the law.

61) Regarding the allegations of Paragraph 61 of the Complaint, the referenced documents (in their entirety) speak for themselves and further the paragraph alleges legal conclusions to which no response is required. The Defendants deny having engaged in spoliation.The Defendants admit to having some such items which have been furnished.

62) The allegations of Paragraph 62 of the Complaint are denied.

63) Regarding the allegations of Paragraph 63 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

64) The allegations of Paragraph 64 of the Complaint state a legal conclusion to which no response is required and, in any event, the Plaintiffs' characterizations are denied in favor of the underlying documents which speak for themselves.

65) The allegations of Paragraph 65 of the Complaint are denied.

66) The allegations of Paragraph 66 of the Complaint are denied.

67) The allegations of Paragraph 67 of the Complaint are denied.

68) The allegations Paragraph 68 the Complaint are denied.

69) The allegations and Plaintiff characterizations within Paragraph 69 of the Complaint are denied and the Defendants additionally note that the documents (in their entirety) should speak for themselves.

70) The allegations of Paragraph 70 represent conclusions of law to which no response is required. Additionally, to the extent the Paragraph references documents, the Defendants note that those documents (in their entirety) should speak for themselves and therefore

deny the Plaintiffs' characterizations thereof. Defendants further deny the applicability of the quoted language to the situation pending before the Court.

71) Regarding the allegations of Paragraph 71 of the Complaint, the Defendants admit that they have not held a vote / referendum to modify the land contract and associated deed restrictions. The Defendants would further note that they have taken no action that as a matter of law would require such activity.

72) Regarding the allegations of Paragraph 72, the documents (in their entirety) speak for themselves and the Defendants crave reference thereto in lieu of the Plaintiffs' characterizations thereof.

73) Regarding the allegations contained within Paragraph 73 of the Complaint, the Defendants admit that the Plaintiffs seek the described court order, but deny that the Plaintiffs are entitled to the same.

74) Regarding the allegations contained within Paragraph 74 of the Complaint, the Defendants admit that the Plaintiffs seek the described court order, but deny that the Plaintiffs are entitled to the same.

75) Regarding the allegations contained within Paragraph 75 of the Complaint, the Defendants admit only that the Plaintiffs seek the described court order.

76) Regarding the allegations of Paragraph 76 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

77) The allegations of Paragraph 77 of the Complaint are denied.

78) The allegations of Paragraph 78 of the Complaint are denied.

79) Regarding the allegations of Paragraph 79 of the Complaint, while the Defendants admit that the Plaintiffs may "believe" immediate action to be required, the Defendants deny the same.

80) Regarding the allegations of Paragraph 80 of the Complaint, the Defendants would admit that the Plaintiffs seek injunctive relief, but deny that the Plaintiffs are deserving of the same.

81) The allegations of Paragraph 81 of the Complaint are denied.

82) Regarding the allegations of Paragraph 82 of the Complaint, the Defendants would admit that the Plaintiffs seek injunctive relief, but deny that the Plaintiffs are deserving of the same.

83) Regarding the allegations of Paragraph 83 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

84) Regarding the allegations of Paragraph 84 of the Complaint, the allegations constitute conclusions of law to which no responsive pleading is required and are, in any event, denied.

85) The allegations of Paragraph 85 of the Complaint constitute conclusions of law to which no responsive pleading is required and are, in any event, denied.

86) The allegations of Paragraph 86 of the Complaint are denied.

87) The allegations of Paragraph 87 of the Complaint are conclusions of law to which no response is required.

88) Regarding the allegations of Paragraph 88 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

89) The allegations of Paragraph 89 of the Complaint are conclusions of law to which no response is required

90) The allegations of Paragraph 90 of the Complaint are denied.

91) The allegations of Paragraph 91 of the Complaint are denied.

92) The allegations of Paragraph 92 of the Complaint are denied

93) Regarding the allegations of Paragraph 93 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses

94) Regarding the allegations of Paragraph 94 of the Complaint, the Defendants admit that on the specified date the Town received a deed from LOLT. Plaintiffs's characterizations are denied as the documents speak for themselves.

95) The allegations of Paragraph 95 of the Complaint are denied

96) The allegations of Paragraph 96 of the Complaint are denied

97) Regarding the allegations of Paragraph 97, the Defendants generally admit that a community opinion matrix was drafted and would demand proof of the remaining allegations.

98) Regarding the allegations of Paragraph 98, the documents speak for themselves and the Defendants crave reference to the underlying documents in their entirety in lieu of Plaintiffs' characterization.

99) Regarding the allegations of Paragraph 99, the Defendants generally admit that the opinion matrix ultimately circulated was not a verbatim copy of earlier drafts and state that the documents should speak for themselves.

100) Regarding the allegations of Paragraph 100, the underlying documents should speak for themselves in lieu of Plaintiffs' characterizations thereof.

101) Regarding the allegations of Paragraph 101, the underlying documents should speak for themselves in lieu of Plaintiffs' characterizations thereof.

102) Regarding the allegations of Paragraph 102, the underlying documents should speak for themselves in lieu of Plaintiffs' characterizations thereof.

103) The allegations of Paragraph 103 of the Complaint are denied

104) The allegations of Paragraph 104 of the Complaint are denied

105) The allegations of Paragraph 105 of the Complaint are denied

106) The allegations of Paragraph 106 of the Complaint are denied

107) The allegations of Paragraph 107 of the Complaint are denied

108) Regarding the allegations of Paragraph 108 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses

109) The allegations of Paragraph 109 of the Complaint are denied

110) The allegations of Paragraph 110 of the Complaint are denied

111) The allegations of Paragraph 111 of the Complaint are denied

112) The allegations of Paragraph 112 of the Complaint are denied

113) The allegations of Paragraph 113 of the Complaint are denied

114) The allegations of Paragraph 114 of the Complaint are denied

115) Regarding the allegations of Paragraph 115 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

116) The allegations of Paragraph 116 of the Complaint are denied.

117) The allegations of Paragraph 117 of the Complaint are denied.

118) The allegations of Paragraph 118 of the Complaint are denied.

119) The allegations of Paragraph 119 of the Complaint are denied.

120) The allegations of Paragraph 120 of the Complaint are denied.

121) The allegations of Paragraph 121 of the Complaint are denied.

122) Regarding the allegations of Paragraph 122 of the Complaint, the Defendants admit that the Plaintiffs seek the specified relief, but deny they are entitled to the same.

123) Regarding the allegations of Paragraph 123 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

124) The allegations of Paragraph 124 of the Complaint are denied.

125) The allegations of Paragraph 125 of the Complaint are denied.

126) The allegations of Paragraph 126 of the Complaint are denied.

127) Regarding the allegations of Paragraph 127 of the Complaint, the Defendants admit that the Plaintiffs wish to reallege their prior paragraphs and, in response, the Defendants reassert their prior responses.

128) Regarding the allegations of Paragraph 128, the Defendants admit only that they exercised lawful authority to enact and enforce 1995 and 2005 ordinances.

129) The allegations of Paragraph 129 of the Complaint are denied.

130) The allegations of Paragraph 130 of the Complaint are denied.

131) The allegations of Paragraph 131 of the Complaint are denied.

132) The allegations of Paragraph 132 of the Complaint are denied.

133) The allegations of Paragraph 133 of the Complaint are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense
(Standing)

The Plaintiffs lack standing to assert their claims against the Defendants.

Third Affirmative Defense
(Intervening and Superseding Acts)

If the Defendants acted or failed to act as alleged in the Complaint, which is denied, there were separate or intervening and superseding acts or failure to act on the part of persons or entities or natural forces other than Defendants, which were the sole proximate cause of Plaintiffs' alleged injuries; therefore, Plaintiffs cannot recover from Defendants.

Fourth Affirmative Defense
(Third Party Beneficiary Rights)

The plaintiffs are not third-party beneficiaries with enforceable rights with respect to their claims.

Fifth Affirmative Defense
(Express Authorization)

The restrictive covenants upon which Plaintiffs base their claims affirmatively authorize the conduct of the Defendants about which the Plaintiffs complain.

Sixth Affirmative Defense
(Failure to Mitigate)

Plaintiff failed to take all available actions to mitigate its alleged damages. The Plaintiffs requested to cut most recently pursuant to the out-dated, superseded cutting ordinance. Plaintiffs did not apply to cut under the current vegetation maintenance ordinance. Consequently, any claim of damages by the Plaintiffs should be disallowed or reduced as a result of the Plaintiffs' failure to mitigate any claimed damages.

Seventh Affirmative Defense
(Tort Claims Act)

The South Carolina Tort Claims Act, S.C. Code 15-78-10, et seq, provides for immunity from liability and suit for any tort, except as waived by the Chapter, for the State and its political subdivisions. The Defendant is a political subdivision of the State of South Carolina, and thus, is entitled to the immunity provided for political subdivisions by the Tort Claims Act. The Defendants raise all exceptions listed in the Tort Claims Act including, but not limited to, Section 15-78-60, as an affirmative defense.

Eighth Affirmative Defense
(Tort Claims Act – Damage Limitation 15-78-120)

The South Carolina Tort Claims Act (Section 15-78-120) limits the recovery to $300,000 and prohibits the recovery or punitive damages against a governmental entity. The Defendant is a governmental entity of the State of South Carolina and thus is immune from any claim for punitive damages.

Ninth Affirmative Defense
(Laches / Statute of Limitations/Equitable Limitations)

The claims of the Plaintiffs are barred by the South Carolina Tort Claims Act and/or common / statutory law such as laches, repose, waiver, estoppel and/or statute of limitations.

Tenth Affirmative Defense
(No Vested Rights or Reliance)

Plaintiffs have no "vested rights" in laws or enforcement policies remaining unchanged. Further, one or more Plaintiffs (upon information and belief) purchased the property upon which a claim is based after enactment of the 2005 ordinance about which Plaintiffs complain. Finally, plaintiffs knew or should have known the same, had no right to rely on information to the contrary, and even if mistaken were not without means of discovering the truth.

Eleventh Affirmative Defense

The Defendants give notice that they intend to rely upon other such defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserve their rights to amend this Answer or otherwise give notice of the assertion of such defenses.

Wherefore, having fully answered the Plaintiffs' Complaint, the Defendants hereby request that this Court dismiss this matter, with costs, and judgment be entered for the Defendants denying all of Plaintiffs' requested relief, and for such other and further relief as this Court deems just and proper.

This 13th day of December 2013

J. Brady Hair
Derk Van Raalte
PO Box 61896
North Charleston, SC 29419
843-572-8700
843-745-1082
derk@bradyhair.com

Attorneys for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius,	)	C/A No. 10-CP-10-5449
Plaintiffs,	)	**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**
Versus	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
Defendants.	)	

FILED
FEB 28 PM 2:42
J. ARMSTRONG
CLERK OF COURT

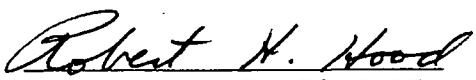
TO: J. BRADY HAIR, ATTORNEY FOR THE DEFENDANTS:

PLEASE TAKE NOTICE THAT Plaintiffs Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III and Karen Albenesius, by and through their undersigned attorneys, will move before the Master-In-Equity for Charleston County for an Order granting Plaintiffs' Motion for Partial Summary Judgment as to Plaintiffs' Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act causes of action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other relief the Court deems appropriate.

This motion is based upon the Plaintiffs' assertion that, even in the light most favorable to the Defendants, the Defendants cannot adduce a scintilla of evidence to refute Plaintiffs' legal and factual assertions as to Plaintiffs' Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act causes of action. Therefore, as a matter of law, summary judgment is appropriate in the Plaintiffs' favor on these two causes of action. This Motion is supported by a memorandum of law being filed

contemporaneously with this Motion and any additional documents Plaintiffs may submit prior to the hearing.

Respectfully submitted,



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A. Walker Barnes (SC #78485)

Attorneys for the Plaintiffs, Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius

February 28, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius,	)	C/A No. 10-CP-10-5449
Plaintiffs,	)	
Versus	)	**PLAINTIFFS' MEMORANDUM OF LAW AND EQUITY IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
Defendants.	)	

In Support of their Motion for Partial Summary Judgment in the above-referenced matter, the Plaintiffs – Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius (collectively "Plaintiffs") – file the following Memorandum.

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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I. SUMMARY OF PLAINTIFFS' ARGUMENTS

There are a number of issues in this case that are most certainly in genuine dispute. However, the Plaintiffs also believe in good faith that a single issue – the deliberate breach of the recorded covenants and restrictions by Defendant Town of Sullivan's Island ("Town") – is not in dispute. The facts are known. The issues presented here are based upon settled prior South Carolina law. As to this single issue, there are legitimate grounds to move for partial summary judgment. Of course, this motion for partial summary judgment is made pursuant to Rule 56 of the S.C.R.C.P.

For the reasons below, the Plaintiffs move for partial summary judgment against the Town and the Sullivan's Island Town Council (hereinafter "Town Council") (collectively hereinafter "the Defendants") on the sole ground of uncontested fact and settled law – that the Town and Town Council have deliberately elected to breach the covenants and deed restrictions with regard to the growth of trees and vegetation in the Accreted Land[1]. It most certainly does not look the way it did back in 1991.

II. RELEVANT BACKGROUND

On or about December 28, 1949, the War Assets Administration of the United States, along with the South Carolina General Assembly, by virtue of its enactment of South Carolina Act Number 420 of 1953, granted the Town of Sullivan's Island the right to sell and dispose in fee simple over ninety (90) acres of accreted beach-front property (hereinafter "Accreted Land").

In the late 1980's and early 1990's, the Town, with public and financial support of its citizens, including many front-row property owners, decided to enact

[1] As defined in the Second Amended Complaint.

permanent measures to protect the Accreted Land from commercial development and to ensure that the property would always stay in the condition it was in the late 1980s. At that time, the Accreted Land was collectively valued at almost fifty million ($50,000,000.00) Dollars.

A. The Town Itself Embarked Upon a Deliberate Plan to Permanently Preserve the Accreted Land in Its Existing State as of 1991.

In an explicit, acknowledged and deliberate effort to "maintain the [existing] natural character of the property and protect the [Accreted Land] from future development and commercialization," the Town sought permanent, valid, binding deed restrictions on the properties at issue. Exhibit 1[2], p. 2, para. 5.

To that end, the Town devised a plan to temporarily transfer the properties involved in this lawsuit through the sale of the Accreted Land to the Lowcountry Open Land Trust (hereinafter "LOLT"), a non-profit South Carolina corporation, dedicated "to the preservation of open space and scenic vistas" and for LOLT to place certain covenants and deed restrictions on the Accreted Land and then immediately return the property to the Town itself.

The plan was fully implemented: the Town knowingly, deliberately and intentionally elected to have LOLT place appropriate permanent restrictions on the Accreted Land in an effort to **preserve the views** and the undeveloped nature of the property. LOLT then immediately conveyed the Accreted Land back to the Town, with the new permanent restrictions in place in the chain of title, and with both LOLT **and Town residents retaining third-party contract enforcement rights** of those newly created land use restrictions.

[2] In fact, the very first item listed in the Deed Restriction Summary is "Conservation Value Associated with [the Accreted Land]" and "Scenic Views and Open Space Values" was listed as a "Very Significant" priority. Paragraph 6, LOLT Files 004. See Exhibit 1, p. 2.

A deed restriction was deliberately chosen because there was a concern that "a transfer of ownership was necessary to ensure the restrictions could be enforced and to bar and to prevent a future Town Council with different motivations from changing or weakening the restrictions or doing away with them all together." Id., at p. 1, para. 3.

With an easement donation, LOLT would retain partial interest in the property. In the Deed Restriction Summary, "scenic views" are listed as serving the overall "public good." Id., at p. 4. In a March 28, 1991 Post & Courier Article, Melvin Anderegg, then Mayor of Sullivan's Island and intimately involved in the orchestration of the deed transfer plan of the Accreted Land, carefully explained the full meaning of the words "scenic enhancement" as described in the deed and/or contract (**Exhibit 2**) executed on February 12, 1991 by LOLT conveying the Accreted Land to the Town as a means to get a better view of the ocean. See **Exhibit 3**. Anderegg also added that "people owning front-beach property pay a high price for property, and should be allowed to cut back growth," noting that "the whole purpose of having beach-front property is to have a view of the ocean." Id. Eventually, the Town planned to raise money so that LOLT could subsequently acquire ownership of the Accreted Land.

B. A Picture Is Sometimes Worth A "Thousand Words".

It has long been conventional wisdom that a photograph can sometimes tell a story that might otherwise take "a thousand words."[3] That old adage is certainly

[3] The adage that a picture can sometimes be worth a thousand words has various origins, according to Wikipedia. Perhaps it came from a newspaper editor in 1913. Or, it may have come from an ad in Ohio. It has even been attributed to the ancient Chinese Philospher, Confucius, that may well have been to give the adage more instant credibility, again according to Wikipedia. Whatever its origin, the Plaintiffs submit it certainly is accurate in this setting.

true here. Attached to this Memorandum are photos from 1989 / 1990 / 1991 time period. Also attached are the much more recent photos of the accreted land. As far as the Plaintiffs are concerned, they show a bitter story of promises betrayed and trust gone astray.

In October of 1989, a little over a year before the deed and contract was entered into by the Town and LOLT, several photographs were taken by the National Oceanic and Atmospheric Administration. These photographs show high-resolution images of the Accreted Land. See **Exhibit 4**.

One of the restrictive covenants of the deed conveyed from the Lowcountry LOLT back to the Town was photographic documentation of the Accreted Beach Land as it existed in February 1991. The photographs depict that in February 1991, there were no trees or vegetation taller than three (3) feet between the front row properties and the Atlantic Ocean. See **Exhibit 5.** In addition, between 1992 and 1994, many photographs were taken by beachfront property owners which confirm the lack of tall vegetation and trees in the Accreted Land. See **Exhibit 6.**

Again, beyond argument, it is obvious that on February 12, 1991, the Accreted Beach Land was **not** full of unchecked overgrowth that obscured views of the oceanfront from homes located adjacent to the Accreted Land. In fact, on February 12, 1991, all vegetation on the Accreted Land adjacent to what are now the Plaintiffs' properties was three (3) feet or lower, and mostly consisted of sea oats and wild flowers.

By direct and shocking contrast, the Court's attention is now directed to a series of 2010 photographs (almost to the day twenty (20) years later) which show the extraordinary change that occurred as the result of the Town's deliberate failure

to perform and follow the restrictive covenants, restrictions, deed terms and promises made in 1991. These photographs portray the current radical change of the property based upon the Town's policies of unchecked overgrowth in the Accreted Beach Land. See **Exhibit 7.** Among the principal concerns in this lawsuit, these photographs demonstrate the shocking and unchecked overgrowth that has completely obstructed, or imminently will obstruct, all views of the Atlantic Ocean and beach affecting a substantial portion of the residents of Sullivan's Island, including the Plaintiffs.

C. The Present Lawsuit and Summary of the Relevant Deed Restrictions.

The present lawsuit applies exclusively to those portions of the Accreted Land marked as areas "A", "C", and "E" on the map attached as **Exhibit 8**. The areas on the attached map marked "B" and "D" represent portions of the Accreted Land adjacent to Fort Moultrie and the current location of the Sullivan's Island Elementary School, areas which do not relate to any of the Plaintiffs' causes of action in this lawsuit.

Notwithstanding the covenants and deed terms, and despite the clear express intentions of the 1991 Town Council and Town citizens who helped support the implementation of the 1991 land transfer and legal protections pertaining the Accreted Land, and notwithstanding the valuable nature of these property rights and the massive reliance placed upon them by numerous people on the Accreted Beach Area, the Defendants in this case have deliberately elected time and time again to intentionally violate the terms of the covenants and the deeds.

III. UNDISPUTED AND UNCONTESTED FACTS

On June 15, 2010, the Bluestein Plaintiffs applied to the Town for a permit to cut, trim and prune, at any time of the year, to a height of no less than three [3] feet, all variety of shrubs and trees located in the portion of the Accreted Land immediately adjacent to the Bluesteins' lot line towards the ocean, within the extension of the Bluesteins' side lot lines projected towards the ocean. **Exhibit 9**. Similarly, on June 23, 2010, the Albenesiuses Plaintiffs applied to the Town for a permit to cut, trim and prune, at any time of the year, to a height of no less than three [3] feet, all variety of shrubs and trees located in the portion of the Accreted Land immediately adjacent to the Albenesiuses' lot line towards the ocean, within the extension of the Albenesiuses' side lot lines projected towards the ocean. **Exhibit 10**.

On June 21 and June 24, 2010, without proper cause and directly contrary to the terms and conditions of the 1991 deed / covenants / and restrictions, the Town denied the Bluesteins' and Albenesiuses' applications to cut, trim and prune. Totally ignoring the Plaintiffs' prior vested property rights, the Town's agreements, promises, the recorded restrictions and covenants, the Town simply put in place a program and policy to destroy Plaintiffs' valuable property rights.

The Plaintiffs' properties are or were appraised, assessed and classified as "beach front and ocean view" properties according to the Charleston County Assessor's Office ("Assessor"). Because of the Town and Town Council's violation of the contract and/or deed restrictions and/or prior vested property rights, the classification of the Plaintiffs' properties as "beach front and ocean view" properties is no longer correct, or is imminently in danger of no longer being correct. In the

case of the Bluesteins' property, the Assessor has stated that their property is "impacted by [the] Maritime Forest."

One of the Plaintiffs' retained experts, Thomas F. Hartnett, G.A. A, C.B., a South Carolina Certified General Real Estate Appraiser has formally opined under oath that the unchecked vegetation growth in the Accreted Land has reduced in fair market value the Plaintiffs' properties by at least one million ($1,000,000.00). **Exhibit 11**.

As is the case with any barrier island, the property values of "front row" properties affects not only the value of properties on the front row, but also the property values throughout the rest of the island. Merely as an aside, but certainly not at all irrelevant, in March 2011, a fire ignited in the Accreted Land, which spread to the real property of McCutchen-Perry, LLC located at 2525 Atlantic Avenue on Sullivan's Island, which is located within a block of the properties of the Plaintiffs' properties. **Exhibit 12** (showing photographs were taken which demonstrate the extent of damage to 2525 Atlantic Avenue). Four of the Town's fire trucks were required to put out this fire, which, fortunately, did not damage anything other than the grass and vegetation in the Accreted Land and on the real property of McCutchen-Perry, LLC.

IV. STANDARD FOR PARTIAL SUMMARY JUDGMENT

As the Court is certainly well aware, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. S.C.R.C.P. 56. In determining whether any true triable issues of fact exist, the Court should view the evidence, and all reasonable inferences that may be drawn from the evidence, in the light most favorable to the non-moving

party. Fleming v. Rose 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed. David v. McLeod Regional Medical Center, 367 S.C. 242, 626 S.E.2d 1 (2006). Moreover, summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. George v. Fabri 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

V. ARGUMENT

A. The Town has Elected to Deliberately Breach Its Prior Promises.

The Plaintiffs all own property on the Island. They also are registered voters and pay taxes. The Deed Restrictions and Covenants found in Exhibit 3 clearly state in Paragraph 5:

> 5. These Restrictions may be enforced by the Town, any property owner within the Town, or by any vote registered within the Town. Such persons may seek any appropriate remedy for any violation, including, but not limited to, injunctive relief to force a termination of the violation or to permit restoration of the area damaged by an prohibited activity.

In addition, Paragraph 5 also continues to read:

> The forebearance to enforce the terms and provisions thereof in the event of a breach shall not be deemed a waiver of any rights granted hereunder. The Town shall not be liable to any person for any violation of these Restrictions by any person other than itself.

The document contains various additional terms, qualifications, restrictions and also contains a method that the Restrictions may be modified or repealed (Section 8). Otherwise, the parties agreed and promised that the Restrictions are in full force and effect for a period of fifty (50) years and "shall be automatically

renewed and continued in effect for an additional periods of 50 years until such time, as these Restrictions are repealed [pursuant to the terms of the Document itself]." Id.

The central question before this Court is really a simple one: are the Restrictions as to Use of the Accreted Land Area, and the Covenants that it will stay the way it was in 1991, so deliberately set up, relied upon, drafted and enacted, by the Town itself to be enforced – in either law or equity twenty plus years later, after massive reliance by many people on the Island, including the Plaintiffs in this case?

Or, is the Town entirely free to change directions, to permit the trees to grow and grow and grow and grow some more, until there is no scenic enhancement (look closely at Exhibit 1 which lists scenic enhancement as the very first purpose of the Restrictions and Covenants). Stated in the vernacular, is the Town free to do whatever it wants, so that the Restrictions, Purposes and Covenants of the Deed can be disregarded at will?

The Court's attention is first directed to a very similar South Carolina case, decided in the first instances by the Honorable George T. Gregory, Jr., then a Circuit Court Judge in Spartanburg County (and later of course to be first an Associate Justice on the South Carolina Supreme Court and then the Chief Justice of the South Carolina Supreme Court). Circuit Court Judge Gregory, Jr. had before him a set of Restrictions and Covenants very similar to the Restrictions and Covenants found in Exhibit 2 before this Court.

In Abbott v. Arthur, 198 S.E.2d 261 (S.C. 1973) the Supreme Court was so struck with the Lower Court order by Judge Gregory, that with utterly minor and insignificant changes, the Court held:

> We are of the opinion that his order properly sets forth and disposes of all of the issues raised on the appeal to this Court. Let his order, with minor deletions of matters not necessary to disposition of the issues, be printed as the directive of this Court.

Id.

In the Abbott case, the original developer of a subdivision on behalf of himself, his heirs, executors, administrators, and assigns, covenants and agreed that "all lots" on a plat shall be "used for residential purposes only," that "no apartment houses of any type, including a duplex or multi-dwelling apartment" shall be erected or maintained that "all persons accepting conveyance of any of the lots shall accept these conditions, covenants, restrictions." Id, at 262.

Precisely as in this case, the operating document in that case noted that the violations of the conditions or restrictions shall vest in the Grantor, its successors and assigns, all rights of abatement and suit in law or in equity against any person or person violating or attempting to violate any condition or restriction. And, again similarly to this case, the operating document in that case declared that the covenants, restrictions, Paragraph 14 in Judge Gregory's case read as follows:

> 14. These covenants, restrictions, and conditions shall continue in full force and effect until January 1, 1985 . . . .

The very first thing that Justice Gregory looked at, when he was reviewing the testimony and evidence in the Abbott case, and he expressly so found, stating that "it is obvious that the predominant use of the property in the subdivision is for residential purposes in accord with the restrictions imposed thereupon." Id, at 263.

In this case, if the Court will review the undisputed and uncontested documents, it is clear that the predominant plan and use of the property was to preserve this land precisely the way it physically looked in 1991, for the benefit of the entire Township. Specifically, we call the Court's attention to all of the following:

First, in Exhibit 1, which is designated the Summary of the Deed Restrictions, the very first things mentioned as the purposes of these Restrictions and Covenants is found on the bottom of Page 2 of the Summary and it reads:

> **Conservation Values Associated With Protected Property**
> **Scenic Views and Open Space Values Very Significant**
> The scenic value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the entire property. Exhibit 1, p. 2.

Beyond all argument or doubt, how could this Summary – which declares its undeveloped natural character of the entire property, and specifically mentions visibility from the Atlantic Ocean, which is now severely threatened, if not already lost, not be as predominant as the residential values in Abbott, when the Town itself declared in its own summary that this is "Very Significant"?

Second, the Town's own Summary of the Deed Restrictions and Covenants in Exhibit 1 only labels one other matter "Very Significant" and that is "Wildlife Habitat Values" on the top of Page 3 of Exhibit 1. Of enormous significance, as far as Plaintiffs are concerned, is that here also there is an express reference to the protection of the existing situation – undeveloped and to stay that way – in no insubstantial part because the Restrictions, to quote the Summary of the Deed explicitly, provide for the "limited ability to alter vegetation." Id.

Third, there has to be a very clear reason that both the Town and LOLT, and the citizens, voters and property owners of the Island, put into the Whereas Clause of Exhibit 2 to specific paragraphs concerning the existing condition of the land in 1991. Specifically, Exhibit 2 references:

> B) An aerial photograph of the Property at an appropriate scale taken as close as possible to the date hereof; and
>
> C) On-site photographs taken at appropriate locations on the Property;
>
> which documentation was explicitly done to "establish the condition of the Property as of the date hereof" which documentation shall be **maintained in duplicate by both the Grantor and the Grantee hereof and made available to interested members of the public upon reasonable request for the purposes of enforcing the restrictions contained herein.** [Emphasis Added to the final line concerning the purposes of this evidence]. Exhibit 2.

In short, Plaintiffs submit that when the Court looks carefully at Exhibit 1 and 2, and reads them all together and collectively, as they were obviously meant to be, the Plaintiffs believe this Court will conclude, as Judge Gregory concluded when he analyzed the situation in Abbott, that the predominant purpose was to preserve the status quo – and to leave the Accreted Land, for at least the next fifty (50) years, if not much longer, the way it was in 1991.

There is more in the Abbott case than merely the primary purpose of the Deed Restrictions and Covenants. Judge Gregory noted in the Opinion, the following:

> It is common knowledge that restrictive covenants enhance the value of residentially subdivided property, and I find that the restrictive covenants here have benefitted the property owners in Walden Estates by controlled orderly development into a residential community. Id., at S.E.2d 264.

In this case, just as in Abbott, there is before the Court the uncontested testimony of Tommy Harnett, a well-known and well-respected real estate appraiser, who has pointed out that these Restrictions and Covenants are worth hundreds and hundreds of thousands of dollars to the Plaintiffs in this case. To be on first row is valuable, precisely because you can (or should be able to) see the beach and Atlantic Ocean. The very visibility that the Deed Restrictions preserved was "Very Significant" in the Abbott case. Indeed, Judge Gregory was so sure of the value of the Covenants and Restrictions in that case, he simply found this as a fact based upon "common knowledge." On this ground as well, Abbott is a leading guidepost for this Court.

Finally, Abbott contains two other telling similarities to this case. In the Conclusions of Law part of the Order, Judge Gregory cited an earlier case by Justice Ness that to casually let a set of restrictions and covenants be torn up in one case is a very bad public precedent. In Abbott, the argument was that nearby commercial developments had undermined the Restrictions. Here, the Town has a somewhat similar argument – the passage of mere time, and a new Town Council, has deemed it would like something radically different and directly opposite than the state the Accreted Land was in as of 1991. However, Justice Ness warned, to remove the sanctity of longstanding, long-respected contractual agreements and place them at the whim of new parties put in jeopardy all types of restrictions and contracts made by Towns, private citizens and others.

If the Town can change its mind about this type of Contract and Restrictions, can it also change its mind about bonded indebtedness? Can it simply say to its own employees the promises made to you about pensions were merely promises that

we now wish to break? The Town was given in the Contract and Restrictions every kind of possible exception – it can make "minor modifications" that "serve the public good" for all of the following purposes:

Drainage
Mosquito control
Public walkways and emergency access
Beach renourishment
Erosion control
Vegetation Management
Educational programs
Public safety
Public health
Scenic enhancement

However, absolutely none of these, as a matter of law, permit the Town to utterly ignore the true primary restrictions of this Deed, its Restrictions and its Contractual Promises, to preserve the Accreted Property in the same manner and in the same experience, and with the same scenic views, as existed back in 1991. It turns the Document inside out and upside down to claim that what is going on today is faithful to the Promises and Covenants and Restrictions that the Town itself eagerly entered into in 1991.

Of course, Abbott v. Arthur is hardly the only Deed Covenant and Restriction case in South Carolina. What is remarkable, however, is just how consistent other South Carolina cases are with the central holdings of Abbott v. Arthur, and how South Carolina has repeatedly taken the wise long-run view of Judge (later Justice) Gregory, Jr. in the Abbott[4] case.

[4] Reliance by this Court on the Abbott case is fully justified on many different grounds. First, it has never even been questioned since its decision in 1973. It has also been cited with express approval by a variety of secondary sources, including the Restatement Third of Servitutudes, Tiffany on Real Property, Trial Handbook for S.C. Lawyers, and S.C. Jur. Covenants and Evidence.

For just some of the cases that have upheld similar restrictions, including the South Carolina case of Sea Pines Plantation Co v. Wells case, the following holdings are referred to the Court's attention:

1. Dent v. Lovejoy, 85 Conn. App. 455, 857 A.2d 952 (2004) Upholding covenants that created and preserved a view easement of the sound, harbor, and river on an island and expressly finding that one of the easement's main purpose was to protect view. The Court noted that the Owner of the dominant Estate very properly brought an action against the Owners of the Servient Estate to enforce the view easement which required the removal of all trees and shrubs more than six feet tall. The Court also noted that the evidence was sufficient to support a damages award, in that particular case, of $8,000;

2. Patterson v. Paul, 448 Mass. 658, 863 N.E.2d 527 (2007) Neighbors view easements were affirmative, rather than negative, and thus did not constitute a restriction on landowners' property subject to 30-year statute of limitations for such restrictions, although easements did not allow landowners to construct any structure on the portion of their own property subject to the easements, easements explicitly conferred on neighbors the affirmative right to enter in order to "clear and maintain an unobstructed view across the entire view easement area"

3. Andrews v. Sandpiper Villagers, Inc., 215 Or. App. 656, 170 P.3d 1098(2007) "No trees, hedges, shrubbery, plantings, or fencing shall obstruct the view of the ocean from designated ocean view lots without the written approval of the [board] referred to those lots that, as a matter of observable fact, had a view of the ocean and protected the "ocean view" without qualification, from obstruction caused by trees, hedges, shrubbery, plantings or fencing of any kind.

4. In Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 363 S.E.2d 891 (1987) our own Supreme Court not only upheld as valid injunctive relief to remedy present and prospective breaches of restrictive covenants against obstruction of view but did not hesitate to order the removal of trees, shrubs, and other obstructions, which violated a covenant's express prohibition against obstruction of the view of oceanfront lot owners in a subdivision tract.

B. The Town Has Not Acted in Good Faith.

On top of a deliberate violation, there is overwhelming evidence that the Town and Town Council have not acted in good faith. On February 3, 2009, the

Town's so-called consultants,[5] purportedly hired by the Town Council to implement what it now calls an "Accreted Land Management Plan" (hereinafter referred to as the Town's Plan) submitted a proposed questionnaire or "opinion matrix" for the Town Council to initiate a series of community forums to discuss the various advantages and disadvantages of various alternatives for the Town's Plan. However, the Plan the Town submitted to the community at large and the public – beyond all question – was not what its own Consultants actually recommended to be submitted. The consultants' own draft questionnaire/opinion matrix included "Ocean Views" and "Property Values" as distinct issues of importance to be considered in any alternative. Town Plan. **Exhibit 13**.

An earlier proposed questionnaire/opinion matrix, which was never submitted to the residents of Sullivan's Island, listed "View of the Ocean" as the first issue to consider when determining how to manage the Accreted Land. **Exhibit 14**. However, the Town's final draft of its questionnaire/opinion matrix which was submitted to Town residents in 2009 completely deleted and categorically reduced in importance the issues of "Ocean Views" and "Property Values."

In the final draft, someone acting for or on behalf of the Town, deliberately relegated to the very last issue to consider a combined category of issues entitled "Views, Beach Access, and Public Safety," completely deleting the issue of "Property Values" from the consideration of the residents of Sullivan's Island and drastically minimizing the issue of "Ocean Views." **Exhibit 15**.

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[5] At a cost to taxpayers of at least $100,000 -125,000 as confirmed by the Town Adminstrator, Andrew Benke, under oath on Feb 19, 2014.

How this happened is in dispute. But, **what is not in dispute and is beyond question** is that it did actually did happen. Someone obviously very connected to the Town and Town Council, so as to be in a position to alter the Consultant's own work, changed and modified the Consultants' proposed questionnaire or "opinion matrix" in order to diminish the importance of property values, scenic views and breezes, to the direct clear detriment of the Plaintiffs in this case. This, of course, really is a perfect example of a breach of contract with fraudulent intent and opens the door to some very harsh remedies.

VI. CONCLUSION

Although the Plaintiffs have pled nine (9) different causes of action, at least one (breach of contract) and possibly two (breach of contract for fraudulent act) appear to be based upon settled law and uncontested facts. Respectfully, therefore, the Plaintiffs move for partial summary judgment on these two questions. No genuine issue material fact exists that the Defendants breeched the deed and/or contract and that the breach was accompanied by a fraudulent act. For the foregoing reasons, the Plaintiffs respectfully request that the Court grant this Motion for Partial Summary Judgment.

Respectfully submitted,

Robert H Hood

Robert H. Hood, Sr. (SC# 2599)
S. Scott Bluestein (SC# 65103)
Michael J. Brickman (SC# 874)
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Stephen A. Spitz (SC # 5287)
A. Walker Barnes (SC #78485)

Attorneys for the Plaintiffs, Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius

2/28/14, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28 day of Feb, 2014.

Heather Berg

EXHIBIT 3 — ALL-STATE LEGAL

REGION B

Obituaries 2-B
Business 3-B
Markets 4-B

ndicted judge wants $86,606 salary

DY BRACK
Post-Courier staff

UMBIA — Indicted Circuit Tee Ferguson told the S.C. Su Court Wednesday that he to keep getting his $86,606 salary to be able to pay for lawyers.

ake away the salary really e in the position I can't afford counsel," said Ferguson, a -old former Spartanburg Democrat cabbed last week ation Lost-Trust.

uson is accused of two counts ing his vote for a total of to support a pari-mutuel bet- ling bill and one count of conspiracy to sell his vote. He also is accused of five counts of cocaine possession and one count of conspiracy to possess the drug. He faces a maximum of 68 years in prison and $1.35 million in fines.

After a federal grand jury indicted Ferguson, the S.C. Supreme Court suspended him without pay. Wednesday's hearing was a chance for Ferguson to show why he shouldn't be suspended and why he should keep getting judicial pay.

Clyde Davis, clerk of the *Supreme* Court, said late Wednesday that the four justices who heard Ferguson's argument had not made a ruling on

• Rogers trial delayed ... 6-B

either to continue the suspension without pay.

"I do not anticipate they'll issue one until next week," he said.

During the 15-minute hearing, Ferguson's lawyers argued that it would be unconstitutional to take away the salary. They said the state constitution provides that the only time it could be taken away was through impeachment — a proceeding left to the Legislature, not the court.

Hemphill P. Pride II of Columbia argued that Ferguson only had been suspended, not removed from office by impeachment.

House Speaker Bob Sheheen, D-Camden, said he did not anticipate a move by the General Assembly to impeach Ferguson until the disposition of the federal charges and only then if he were found guilty.

Pride also said that indictments against Ferguson were only allegations and did not constitute judicial misconduct that necessitated suspension.

"At this point in time, Judge Ferguson is an innocent man," Pride said, adding that Ferguson, dressed in his trademark bow tie, would plead not guilty to accusations against him.

"An indictment in this case is no more than what I would call a spurious allegation," Pride said. "Before disallowing the salary, he should be afforded due process as any citizen."

Another of Ferguson's lawyers, Kevin Holmes of Charleston, argued that the judge should keep his salary because he had to give up his livelihood — a law practice — to take the bench. If suspended without pay, he would have no income.

"A judge cannot earn income other than being a judge," Holmes said.

Ferguson said he understood that the court would be under pressure to take away the salary while he was not working. But he proclaimed his innocence and reiterated that he was not "a man of means."

"The federal government has all but admitted that this sting was a set-up operation" to compromise certain officials, Ferguson said. "It was not a situation where I as a judge ... went out into the community and put myself in dire straits."

He said he looked forward to a jury trial. "I feel confident I'll be vindicated."

Ferguson should be arraigned next week.

oodbye 'barn isers'

LIE PORTER
Post-Courier staff

Hurricane Hugo struck 1½ go, more than 7,000 Menno- nists and Brethren in Christ members from across the d Canada have built 50 homes Charleston area and repaired 100 others.

andles Paul Brubacher and mmers see it as just another thing — but a big one at that.

esday, the two were among remaining Mennonites in the ston area who gathered at a bottling plant in Moncks which has served as their arters. They shook hands, odbye to each other, and left trucks loaded with tools for hry farms in Pennsylvania.

Mennonite Disaster Service's over, Brubacher said.

kind of bittersweet to leave," l. "We saw it coming a while a date. At some point you to cut it off. We could have for forever."

Brubacher will be looking a shoulder.

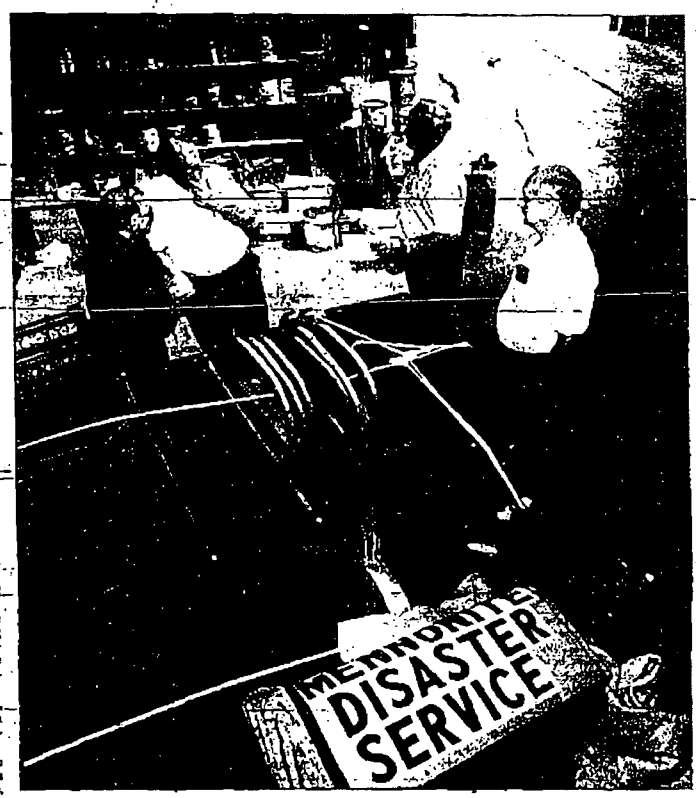
Mennonite Disaster Service its to disasters, and is leaving because it has become too dif- o determine whether damage me was caused by the hur- Brubacher said.

ounties, particularly youths, continue coming to the area air substandard homes in re- lated areas, he said.

acher will continue to help te the volunteer workers is sons' farms in Morgantown, d said he hopes to return to a when he can.

Mennonites leave behind hun- of appreciative homeowners, s Leopard, a Salvation Army worker who worked closely e Mennonites.

e see GOODBYE, Page 8-B



Staff Photo by Wade Spees

With the Mennonite Disaster Service's work complete, volunteers (from left) Leon Summers, Melvin Horst, Ed Huber and Vernon Umble have a last conversation before going their separate ways. The Mennonites and other workers have built or repaired more than 1,450 homes.

Festival loses 'Twelfth Night'

By FRANK P. JARRELL
Of the Post-Courier Staff

Shakespeare's "Twelfth Night" will not be presented during the upcoming Spoleto Festival USA.

Earlier this year, the festival announced Sir Peter Hall's staging of "Twelfth Night" here but several members of the cast refused to fly to Charleston from England for fear of terrorism stemming from the Persian Gulf war.

Festival General Manager Nigel Redden said Wednesday other transportation, such as ships, would not have helped.

"They'll close the show (in England) the Sunday before their opening at the festival. Boats just don't get here that fast. There was no alternative," he said.

Redden said one member of the cast, whom he declined to identify, first said he would not travel by air. "When that one man said he was unwilling to come, he fueled the flames of two other actors' worries. They said that if he wouldn't fly, they wouldn't."

Replacing the actors, Redden explained, would have involved rerehearsing numerous scenes. "So another of the players refused to go through the rehearsing again. By this time, everything had fallen apart."

Several times in the past, the festival's dramatic productions have been last-minute announcements — with the audience buying tickets for "A Play" without knowing what they would see. "I guess some traditions die hard," Redden quipped.

He said negotiations are under way for another play but declined to be specific. "We're looking at one classic and one contemporary work.

Please see NIGHT, Page 8-B

Holderman paid Holladay's rent

Staff and wire reports

Former State Development Board director J. Mac Holladay said Wednesday he was unaware that then-University of South Carolina President James B. Holderman paid his rent for more than a year when he headed the agency.

Holladay, now director of the Mississippi Department of Economic Development, told the Post-Courier that the Columbia apartment "was simply provided to me. It was part of an arrangement I had when I took the job."

Holderman, who was indicted last week on charges that he used his office for personal gain, paid Holladay's rent for 14 months with funds from a presidential discretionary account, said university spokeswoman Debra Allen. The $400 monthly rent was paid while Holladay lived in a university-owned duplex on the east side of the campus between August 1985 and October 1986.

In all, Holderman reportedly paid $5,800 in state funds toward Holladay's housing costs.

Holladay came to Columbia in mid-1985 from his post as head of the Charleston Trident Chamber of

Please see HOLLADAY, Page 8-B

owcountry churches lan special services

IP JOHNSON
Post-Courier staff

most important part of nity's Holy Week begins to- nd churches throughout the untry are planning special es.

y Week began last Sunday with Sunday and it will culminate days from now with Easter ally are somber. Many churches hold a three-hour meditation starting at noon to remind worshippers of the three hours Jesus hung on the cross.

Holy Saturday. As Jesus' body lay in the tomb, his followers scattered in confusion because they feared he was dead. Several churches will hold Easter vigils on Saturday to commemorate that pe-

"The Crucifixion" by Sir John Stainer

Bethel United Methodist Church, 37 Pitt St., will gather to participate in Tenebrae, a service of readings and music, and a Communion service at 7:30 p.m. Friday.

Trinity United Methodist Church, 273 Meeting St., offers services at 7:30 a.m., noon and Friday.

Emanuel Original Baptist Church, 26 Pinckney St., will have services at 7:30 a.m., noon and Friday. Central Methodist holds events with the Rev. Hallonquist Brown Jr. leading at New Central Street Baptist Church.

First Baptist Church of Moncks Corner, 112 E. Main St., will present a cantata Friday at 7:30 p.m. Easter celebration of the services at 7:30 a.m. sunrise service through sundown. Those services will be conducted at 8:30 a.m. and 11 a.m. Free

Tree work irks island residents

By DAVID QUICK
Of the Post-Courier staff

Sullivan's Island officials passed ordinances last month protecting accreted beach and dune property from being developed, but some residents found out this week that the land is still vulnerable.

About two acres of a mostly tree-

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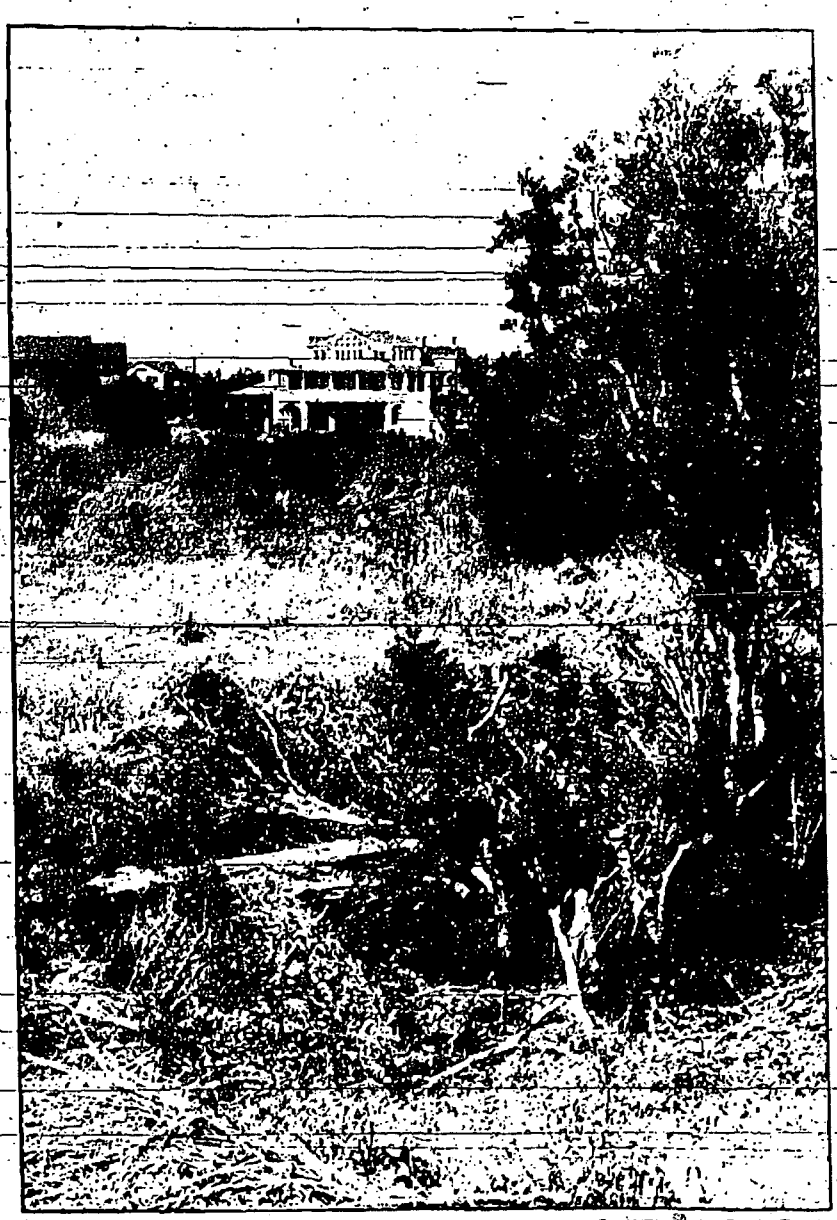
Please see HOLLADAY, Page 6-E



Staff Photo by David Quick

Wax myrtles cleared on accreted land.

Tree work irks island residents

By DAVID QUICK
Of the Post-Courier staff

Sullivan's Island officials passed ordinances last month protecting accreted beach and dune property from being developed, but some residents found out this week that the land is still vunerable.

About two acres of a myrtle tree grove in the dunes in front of attorney George Sink's house were severely cut back last weekend.

Despite the deed restrictions put on the property by the Lowcountry Open Land Trust in February, zoning ordinances still on the books at town hall allow front beach residents to obtain permits to cut vegetation for mosquito control and scenic enhancement.

Part-time Zoning Administrator Kent Prause said Sink got a permit March 5 to cut trees in the dune area in front of his house at Station 17 and Atlantic Avenue.

However, when Prause investigated the area Tuesday, he said the cutting violated a section on the per...

Please see TREE, Page 6-B

Correction

A story in Wednesday's editions incorrectly stated that new Schools Superintendent Rodney LeBoeuf has purchased a house in Charleston. LeBoeuf is leasing a home on Water Street with an option to buy it.

R 28 1999

TREE

from Page 1-B

mit prohibiting cutting vegetation more than three feet to the ground.

Prause called the site "a big mess," and said most of the trees were cut to the ground. He added that workers left about four cedar trees intact, neighbors said some other cedars also were cut.

If cited, the violation would be considered a misdemeanor and carrys a fine of $200 and or 30 days in jail. Town Attorney Lawrence Dodds is expected to meet with Prause and talk to Sink today.

When Sink was contacted by the Post-Courier about the issue Wednesday, he said it was the first time he heard there was a problem.

Sink said he was sorry about what had happened. He added that he did not know he did anything wrong and was under the impression other islanders were doing the same thing.

"This really sets me back. I didn't understand there would be a bad reaction, and I apologize to anyone who is upset ... I always want to be on the right side."

Sink, who has lived in his Sullivan's Island house since 1984, said he hired a professional tree-cutting service thinking it would abide by the permit regulations. He wanted the area cut to improve the view of the ocean from his house and to help control mosquitos breeding in puddles in the area.

Sink isn't the only one seeking permits and cutting trees in the accreted area.

South Carolina Electric & Gas Co. cuts back an area in front of its Sand Dunes Club on a regular basis. Some residents complained to town council the last time the utility cleared the area.

Harry Hooker, an Atlantic Avenue resident, said he knows of about 15 to 20 acres of the 100-acre accreted, undeveloped dune area — which is owned entirely by the town — that have been cut in a similar fashion by other residents in the past two years.

While myrtles are well-known for growing back quickly, Hooker and other neighbors worry about wildlife that has sought refuge in the myrtle grove, particularly during nesting season.

Will Post, an ornithologist who alsoserves on the Sullivan's Planning Board, said the myrtle grove was valuable bird habitat, especially for ground doves and painted buntings. Both species, he said, are sensitive to disturbance.

Elizabeth Hagood, executive director of the land trust, said she wasn't sure the cutting complied with spirit of the deed restrictions, but that the issue poses a big question about the scenic enhancement term.

To Mayor Melvin Anderegg, however, scenic enhancement means getting a better view of the ocean. He said people owning front beach property pay a high price for property, and should be allowed to cut back growth.

"The whole purpose of having front beach property is to have a view of the ocean," he said.

NIGHT

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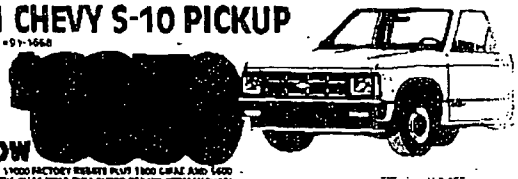

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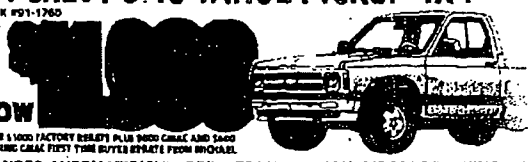

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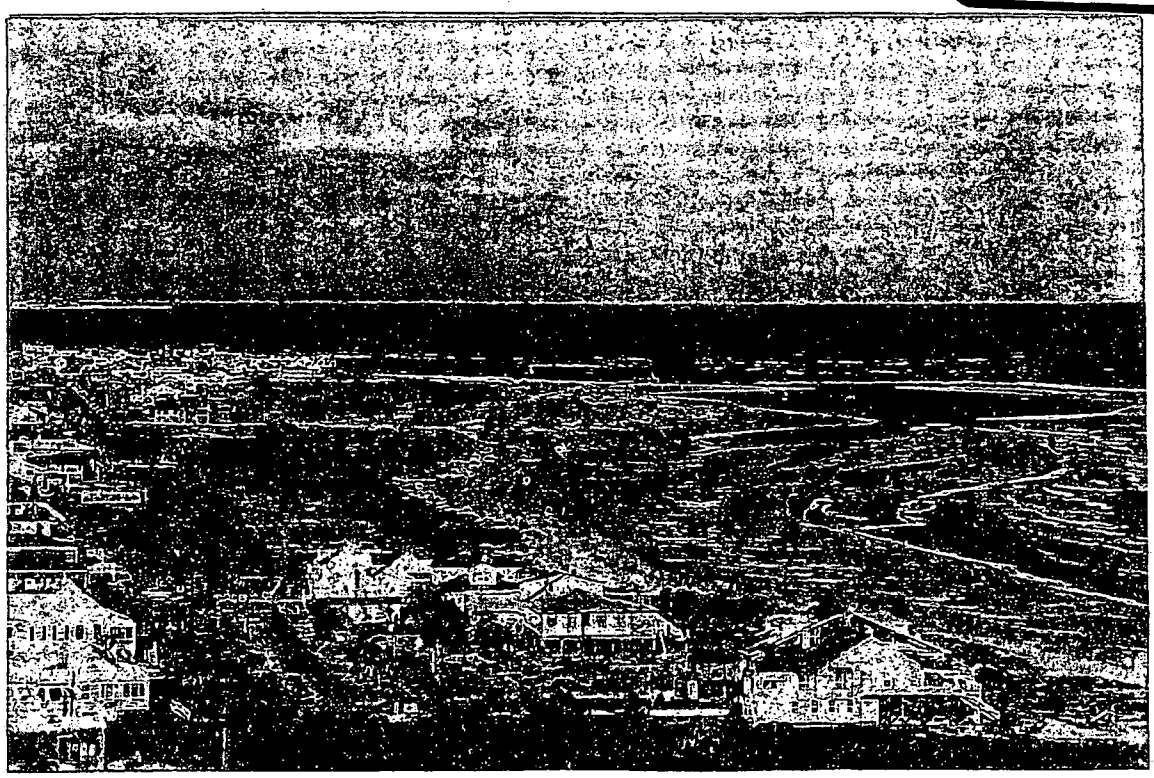

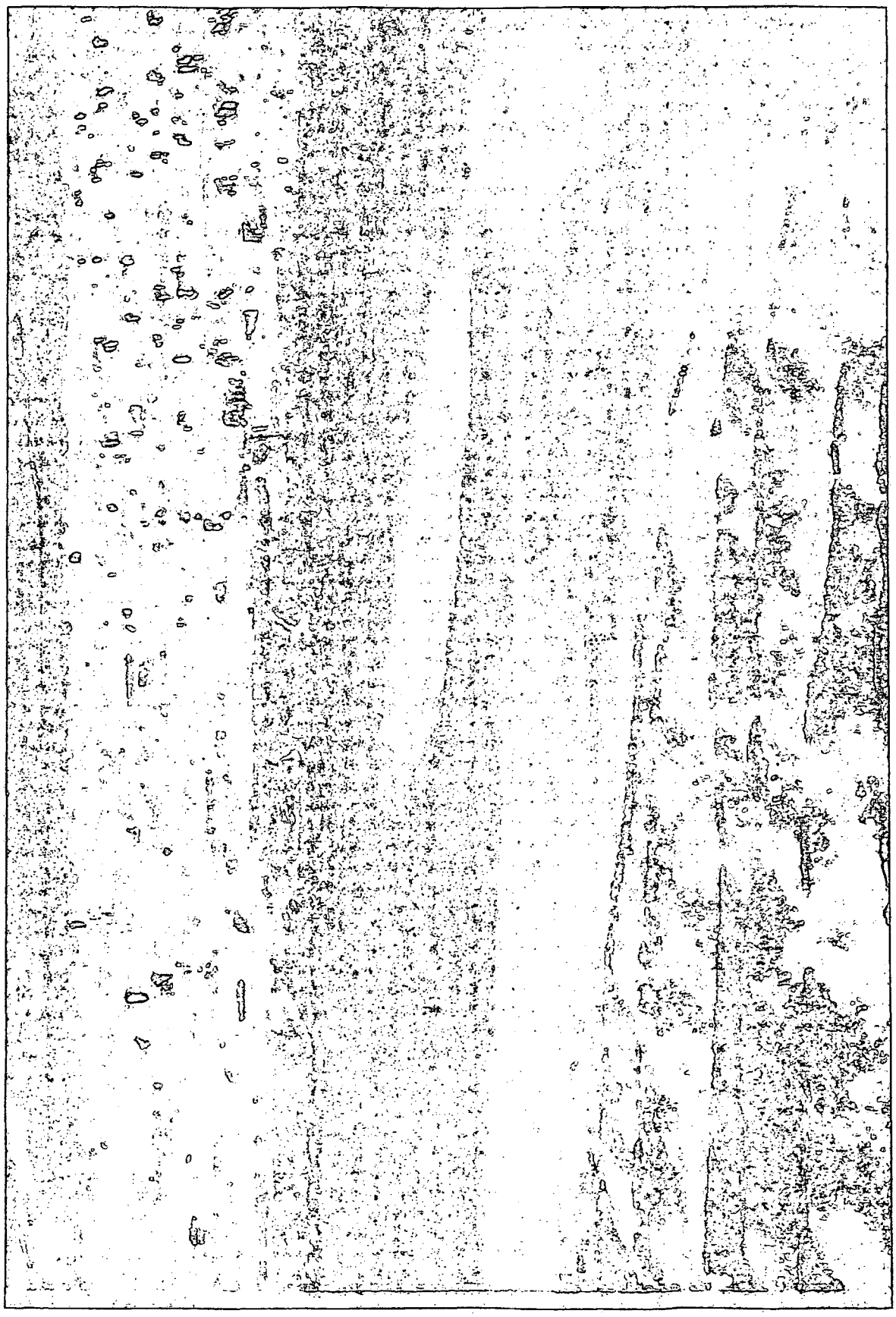

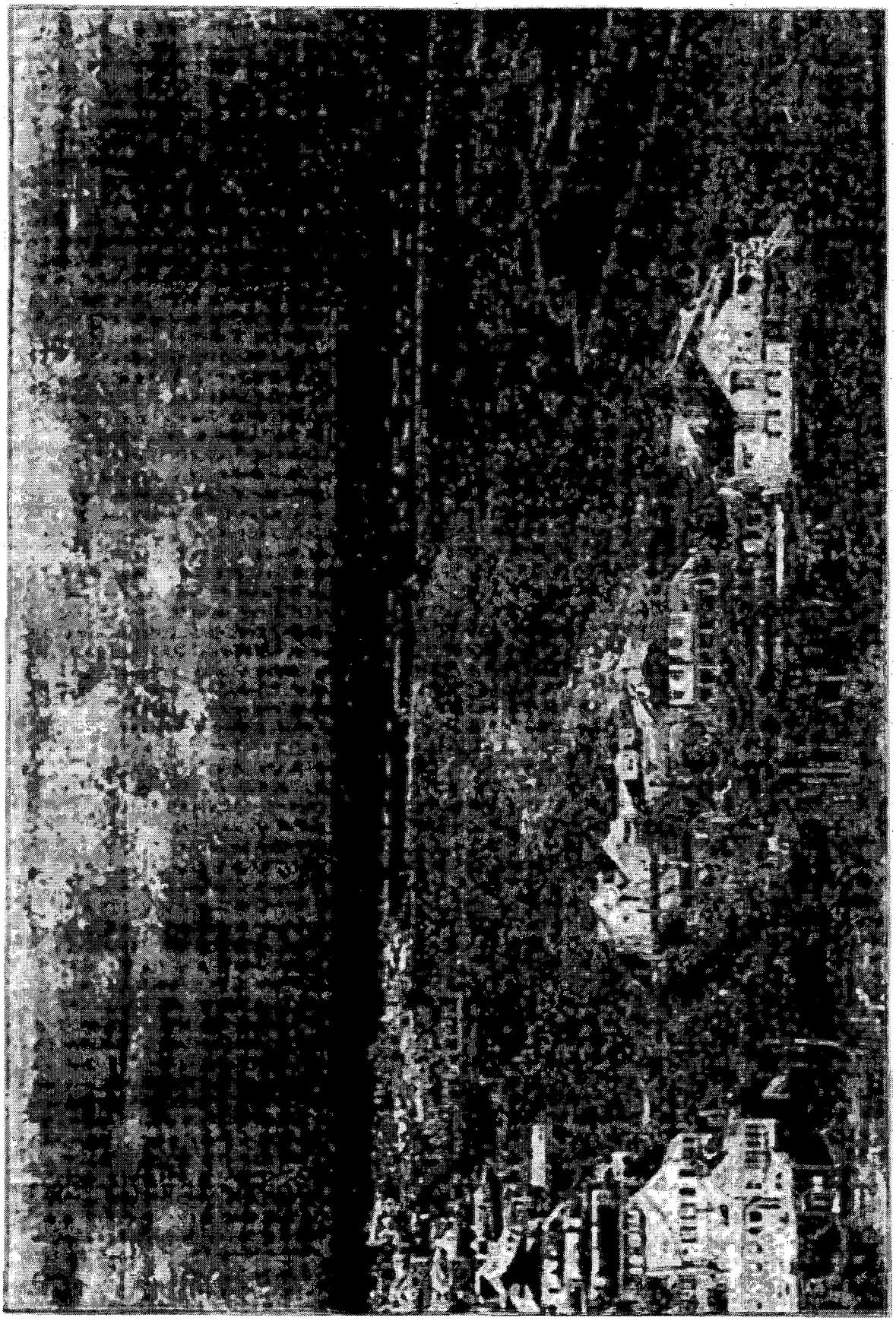

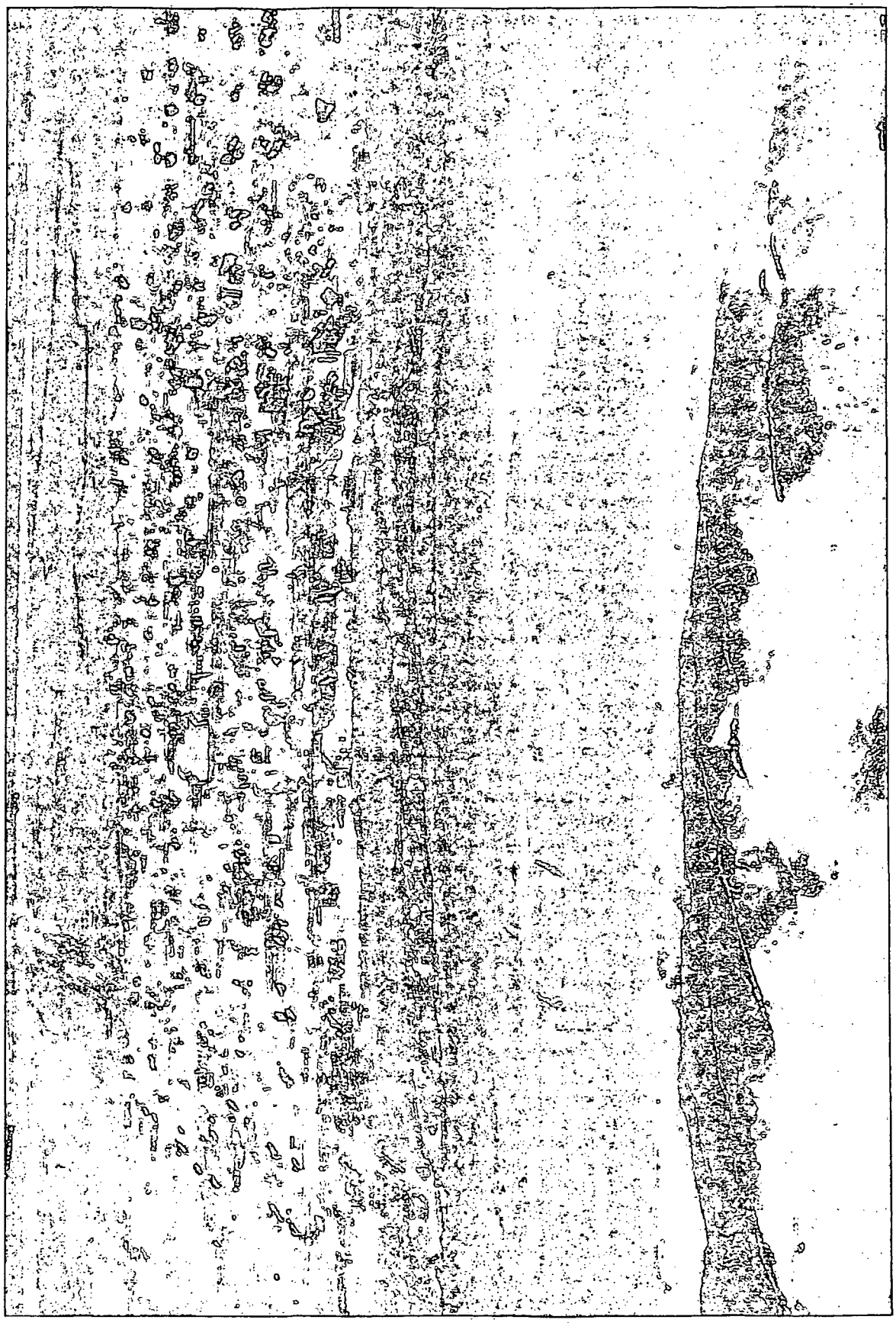

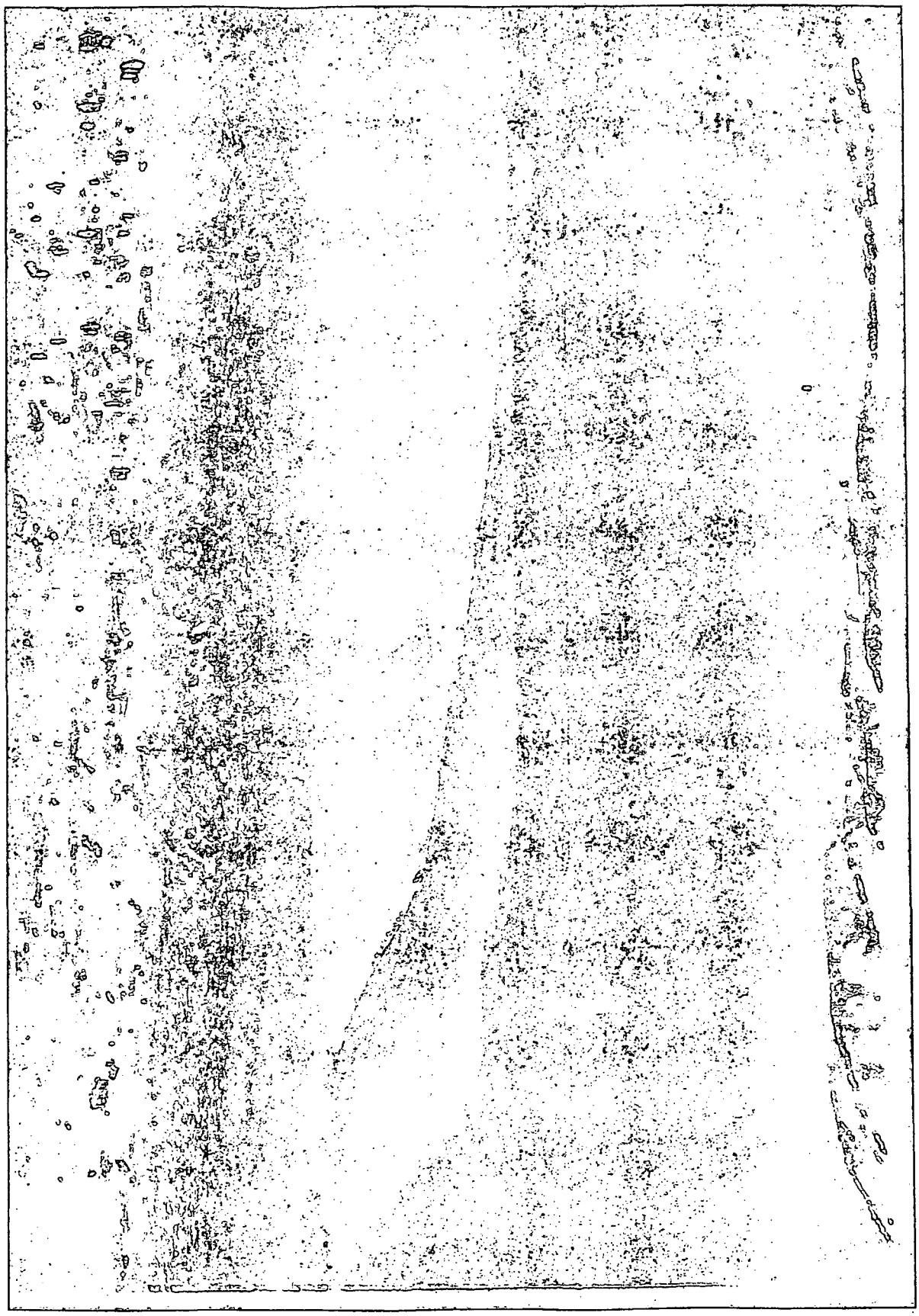

EXHIBIT 12

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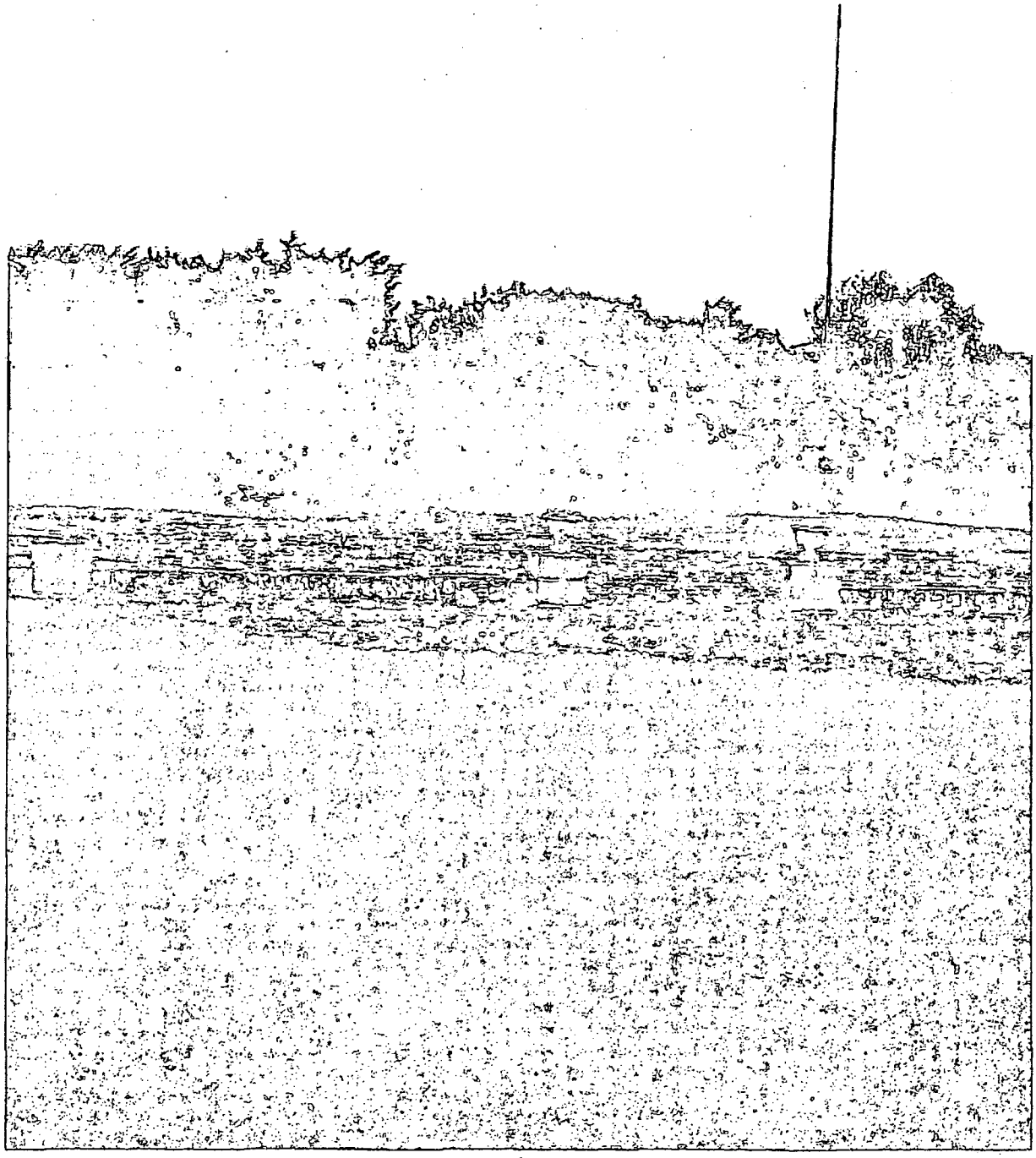
Joanna Cleary

From: MCFADDEN JANE PERRY [jpmcf1@gmail.com]
Sent: Sunday, March 20, 2011 8:23 PM
To: Joanna Cleary
Subject: fire at Sullivan's



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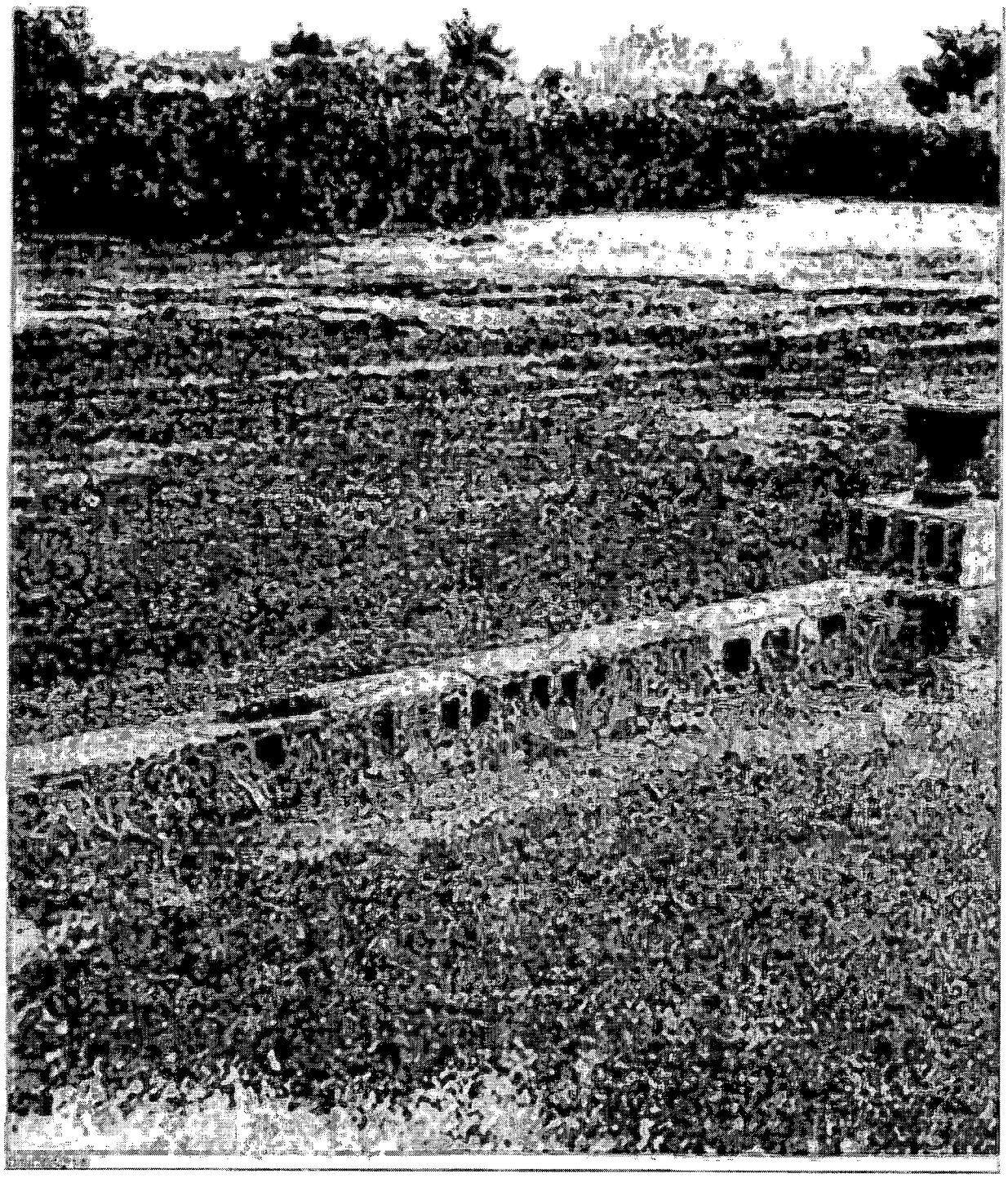

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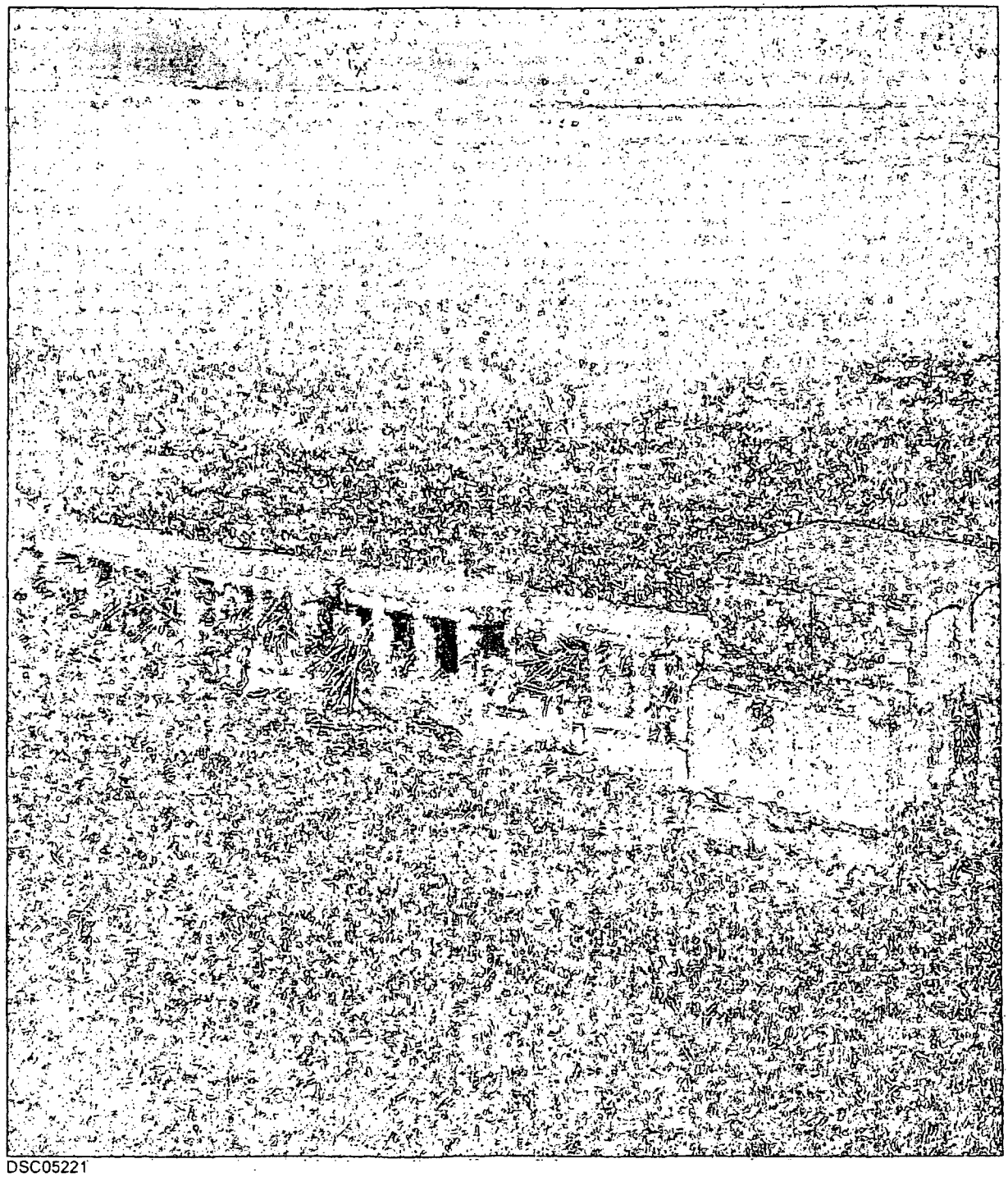

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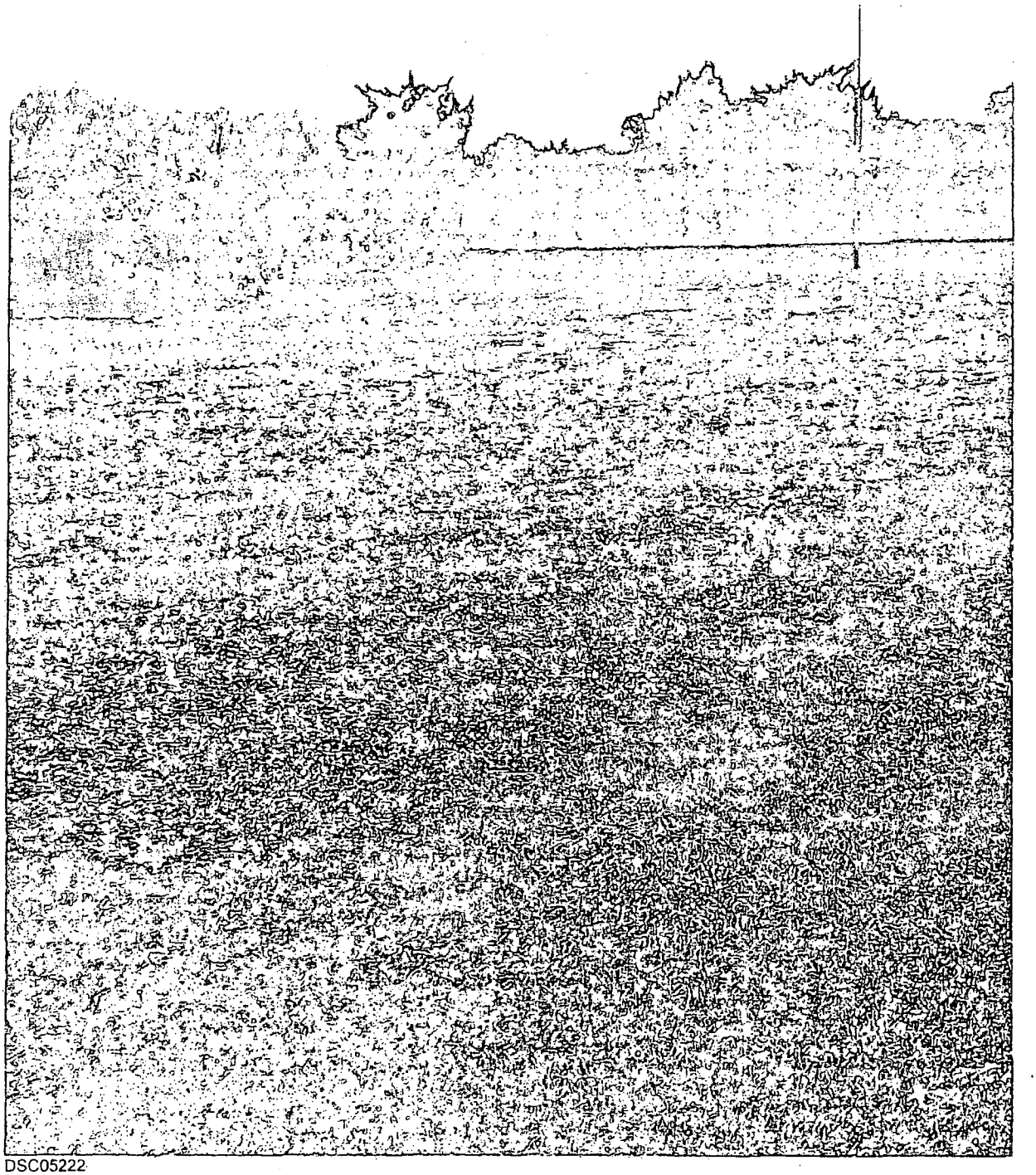

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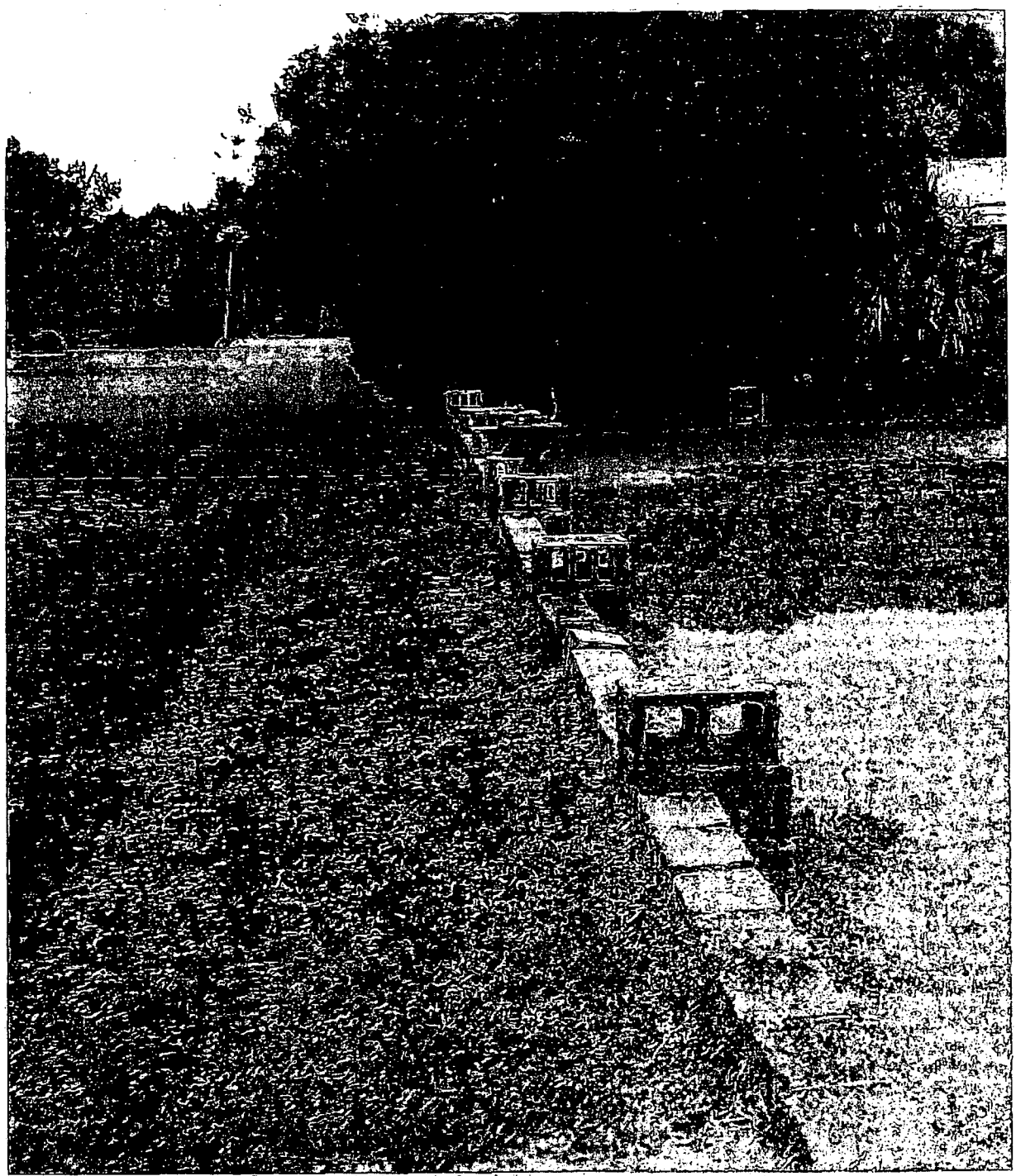

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original sealed deposition in CP file cabinet

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

NATHAN BLUESTEIN, ETTALEAH BLUESTEIN, M.D., THEODORE ALBENESIUS, III, AND KAREN ALBENESIUS,

Plaintiffs,

vs.

CASE NO. 10-CP-10-5449

TOWN OF SULLIVAN'S ISLAND and SULLIVAN'S ISLAND TOWN COUNCIL,

Defendants.

RECEIVED FEB 28 2014

ORIGINAL

DEPOSITION OF: JULIA M. KHOURY

DATE: January 25, 2011

TIME: 10:00 a.m.

LOCATION: Hood Law Offices
172 Meeting Street
Charleston, SC

RECEIVED FEB 28 2014
Charleston County
Clerk of Court

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Skyler Hare Britt,
Court Reporter

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
NATHAN BLUESTEIN, ETTALEAH BLUESTEIN, M.D., THEODORE ALBENESIUS, III, AND KAREN ALBENESIUS,

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF
NATHAN BLUESTEIN, ETTALEAH BLUESTEIN, M.D., THEODORE ALBENESIUS, III, AND KAREN ALBENESIUS:

HOOD LAW FIRM
BY: ROBERT H. HOOD, SR. and WALKER BARNES
172 Meeting Street
Charleston, SC 29401
(843) 577-4435
bobbyhood@hoodlaw.com
walker.barnes@hoodlaw.com

ATTORNEYS FOR THE DEFENDANT TOWN OF SULLIVAN'S ISLAND:

J. BRADY HAIR
BY: J. BRADY HAIR
2500 City Hall Lane
North Charleston, SC 29406
(843) 572-8700
brady@bradyhair.com

ATTORNEYS FOR THE DEFENDANT JULIA M. KHOURY:
SHAHID LAW OFFICE
BY: A. PETER SHAHID, JR.
89 Broad Street
Charleston, SC 29401
(843) 853-4500
shahidlo@bellsouth.com

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * *

JULIA M. KHOURY,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. HOOD:

Q. A deposition is a formal process in that you're under oath. You're asked questions. You have a right to read and sign what is taken down. You can't change your testimony but if the court reporter makes a mistake because you talk different than her, for example, and she takes a yes and it should be a no, you can correct that on an errata sheet so you have the right to do that. Think about it and on advice of your counsel you can either assert that right or not depending on how the deposition goes.

A. Okay. I'd like to read it.

Q. Okay. Then that takes care of that.

She will type it up and send it to you and within 30 days of you getting it, please sign it, make whatever corrections you want to make and return it to her. If you don't within 30 days, we'll assume you have no changes and we'll go with the testimony as she's transcribed it and typed it up.

If you have any questions during the deposition, you should direct them to me. Now that you're under oath, it's inappropriate to talk to your attorney. When we take a break, you can't say how am I doing, what can I do better or worse or whatever.

But this also is not a torture process. It's a very polite proceedings and I'll be polite. And if you need to use the facilities at any time, just tell me, we'll immediately stop. If you want anything besides the coffee you have and water, we've got diet Cokes and regular Cokes and be happy to get that for you. If you'd like some ice with your water, we have plenty of ice.

The reason I'm taking your deposition is because we are intellectually opposed to each

other about how the accreted land should be treated on Sullivan's Island. And you have marshaled a couple of people, opposing property owners enjoying ocean views and breezes and basically allowing the forest to grow up in front of their homes.

Why is that? What's the advantage to you on the fourth row of Sullivan's Island does that give you and your home?

A. Third row, and it is a simple love and appreciation of the treasure that we have out there wanting it to be handled in a responsible way.

Q. Okay. How long have you lived on Sullivan's Island?

A. 33 years.

Q. Back before you were born were you aware that if the land in front of someone's house built up, they could buy the lot for $300 from the Town?

A. Before I was born was I aware --

Q. Yeah.

A. No.

Q. Were you aware that that is what occurred before you were born on that Island for 50 years?

A. No, I was not aware of that.

Q. Okay. In fact, the people who own Mr. Bluestein's lot that he bought, bought it from the Town. I think the price had gone up to $800 when the Krawchecks bought it.

And then those people, 80 something property owners, were advised that instead of doing that in the future we can deed this land to the Open Land Trust and it will always look like it does now which is beautiful, sea oats and wildflowers. There were no trees. None in front of my two clients' homes and in front of that whole block where they live. And to accomplish that --

(Off-the-record conference.)

BY MR. HOOD:

Q. So then a committee was formed and the Town decided to deed the property that was out there like it looked at the time, February of '91, to the Open Land Trust and it was going to stay looking like that.

Well, over time you and your friends have gotten the Town to pass ordinances that prohibit the cutting of some trees and now those trees that y'all have very cleverly gotten the Town to say we can't cut have grown up and the views are now going away and the value of the property is

going away because there are no longer oceanfront houses.

And Tommy Hartnett has issued an opinion saying with the loss of that ocean view, the property has decreased in value by $1 million.

Now, do you think it's reasonable and appropriate for you as a resident of Sullivan's Island to cause the decrease in value of 81 houses by $1 million each?

MR. SHAHID: Object to the form of the question and object to the testimonial aspect of the question. Go ahead and answer the question.

THE WITNESS: First of all, we did not -- we were not organized in any way to establish any sort of cutting of trees, what trees were cut. That was way -- that was established way before we were on the scene at all.

BY MR. HOOD:

Q. Well, I think you've got e-mails to Pat O'Neil back in the early 2000s.

A. Uh-huh.

Q. So you were on the scene and they passed an ordinance in '05 that does what I just said and that is prohibits cutting certain trees.

Now in 2011, it's very apparent that

the trees you can't cut within time, about five years, take away the view totally of the property adjacent to them.

A. We had nothing to do with the selection of trees or those rules that were passed.

Q. You didn't have anything --

A. In reading the Land Trust document, I thought that those trees were listed within that as to -- as being trimmable.

Q. They're not.

A. Or removable. Popcorn trees.

Q. Yeah, there's no reference to any specific tree in that deed at all.

MR. SHAHID: Object again to the testimonial aspect.

BY MR. HOOD:

Q. Yeah, the deed speaks for itself and it's attached to my compliant. Have you read my complaint?

A. Yes.

Q. Okay. So you've read the attachments to it and so then you know I'm correct that the deed has no reference to a specific specie of tree.

MR. SHAHID: Again object to the form of the question and to the testimonial aspect of the

question. Go ahead and answer the question.

THE WITNESS: Well, I don't think there was a question.

BY MR. HOOD:

Q. Were you aware that the deed does not specifically refer to a type of tree?

A. That was to my knowledge but I could be mistaken. You know, that's just what I thought.

Q. Yeah.

A. We were in no way involved with what trees were selected for that. That's entirely up to Council.

Q. I'm not going to see an e-mail from you saying that you want these kind of trees not cut?

A. What kind of trees?

Q. Any kind of tree, any kind of hardwood tree, cedar tree, willow tree. Poison ivy. Myrtle tree. Any kind of tree.

A. To my knowledge, we have always gone for the health of the land. We have never said nothing to be cut. I don't think that would be reasonable.

Q. What's wrong with the health of the land in having sea oats, yellow and red wildflowers like it has always been? Is there something wrong

with that?

A. Well, it has not always been that way. Things grow in the accreted land. In the protected land.

Q. Is it true that your husband said that the reason he's taking the position you and he are taking is because when he walks down the beach, he doesn't want to see any houses?

A. He says that he enjoyed that.

Q. Not seeing any houses?

A. He enjoyed that, seeing the natural habitat. He enjoys that.

Q. So when I walk down your street, should I not see your house? Should we plant trees around it so I don't know it's there?

A. I don't live in protected land.

Q. Protected in what way by whom?

A. Protected -- the Open -- the Lowcountry Open Land Trust, you know, is the Trust.

Q. Okay. Why aren't your needs for the protection of a accreted forest satisfied by allowing the forest to be developed in its natural condition in front of the school and in front of Fort Moultrie?

A. I believe that all land -- all of the

land that's in the Trust should be handled in a responsible, ecologically sound way. All of the land that's in the Trust.

Q. And has that been occurring?

A. No.

Q. Why is that?

A. I have seen dying trees out there. I see that when the myrtles are flat-topped there's a vine overgrowth making for more of a rodent population habitat potentially.

The things that our community is trying to fight against is what is being created out there. When the vines cover the flat-topping of the wax myrtles, the wax myrtles are -- I mean, continually cut. The wax myrtles are not allowed to come up through to stop the vines, through to the sun to stop the vines.

Hardwoods on back landward are imperative for holding the sand in. It's a very delicate ecosystem with grasses and shrubs and trees that are beginning, saplings and then on up to your larger trees for responsible handling of the Barrier Island Ecosystem. It's a very delicate procedure. And I can't say that I have all the answers to handling it. I mean, that's what the company was

hired for.

Q. How many people are members of whatever organization you head? What is it called, Sullivan's Island something?

A. The Sullivan's Islanders Group.

Q. Yes, how many people?

A. There are nine members of the steering committee.

Q. Okay. And how many members beyond that, if any?

A. We have no membership list other than the nine members of the steering committee.

Q. And who are those nine members?

A. You have a list in your.

MR. SHAHID: No, actually, I haven't given it to you yet. She's got a list for you.

MR. HOOD: Okay. Thank you.

(PLF. EXH. 1, The Sullivan's Islanders Steering Committee Members list, was marked for identification.)

BY MR. HOOD:

Q. Are you aware that there are some 2 or 300 people that agree with our position against the nine people on your group?

A. I'm aware of your number. The -- my

group is the membership of the steering committee.
Q. The what?
A. Steering committee.
Q. What are they steering?
A. Our group is mainly a public education group. We are only positive in our approach.
Q. You think reducing the value of the real estate on Sullivan's Island by $80 million is positive?
A. We think that the accreted land adds to the value of every home on the Island.
Q. You think it's going to increase the value of your house?
A. Adds to the value of every house.
Q. Do you think it will increase the value of your house?
A. I don't know. That's not my area of expertise. I hope so.
Q. And if there's a forest between your house and the ocean, you don't think it will reduce the value of your house?
A. I do not.
Q. So then you agree -- you disagree with Tommy Hartnett that if you're on the third row, the value of your house is going to go down a half a

million dollars with a forest in front of it. You disagree with that?
A. I do.
Q. And even if he's right, you don't care?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. Answer the question.
A. I am -- say again.
Q. Even if Tommy Hartnett is right and the value of your house goes down a half a million dollars with a forest in front of it, you don't care?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. That doesn't upset you?
A. I am not unsympathetic to people that have that concern.
Q. Are you aware that two houses -- first of all as to you specifically, just answer the question: Do you care whether your house where you live goes down in value a half a million dollars? Yes or no?
A. Well, no, I don't think that it will,

though.
Q. If it -- assume I'm right -- it does go down in value a half a million dollars, do you care? Yes or no?
A. I don't know.
Q. You don't know whether you care or not? Is the house title in your name?
A. It's probably a joint name.
Q. How about the house in front of you, who lives in front of you?
A. Fred and April -- oh, gosh, I forgot their last names. It's a rental for the most part.
Q. And if their house goes down $750,000 in value, do you care?
A. I'm not unsympathetic to anyone's pain.
Q. About their loss of money and loss of value.
A. I'm not unsympathetic.
Q. Then why don't you compromise your position and accept the maritime forest where there is one without interfering with people and their property and their value and their enjoyment of living on the Island?
MR. SHAHID: Object to the form of the question.

BY MR. HOOD:
Q. And join with us and agree to allowing the ordinance that was in effect at the time the Open Land Trust deed was signed to be reinstated so that everyone that lives on the first row or the second row and in some instances the third row can enjoy the breeze -- certainly the breeze and some view of the ocean?
MR. SHAHID: Object to the form of the question.
THE WITNESS: All that is in the Land Trust I believe should be protected and managed responsibly in an ecologically sound manner.
BY MR. HOOD:
Q. Did you see the --
A. To the benefit of all Sullivan's Island citizens.
Q. So everybody is on a level playing field.
A. To the benefit of the higher good for the majority of Sullivan's Island citizens.
Q. So we want -- is it communism we want or socialism?
MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. On Sullivan's Island? Which do you prefer? Communism or socialism?

A. I would rather live in a democratic society as in America.

Q. So if someone works hard and makes some money and buys an ocean view, they shouldn't be allowed to keep it? You resent that?

A. I am for the handling of the land in a responsible way to the benefit of the majority of Sullivan's Island citizens.

Q. And what benefit is there to the majority of Sullivan's Island citizens of having a forest in front of oceanfront homes that never had a forest in front of it?

A. Properly managed area is a joy for bird watching, for habitat, for just the beauty, the aesthetics that are there. For the -- the grace of having protected land. Actually beachfront is almost unheard of. It's a joy to all in my opinion.

Q. So then if I'm right and real estate values plummet on Sullivan's Island over 80 -- maybe over $150 million by this fight and the trees grow and your taxes double, are you going to like that because you're going to have to pick up the slack on

the third row.

MR. SHAHID: Object to the form of the question.

THE WITNESS: I don't think that that will happen.

BY MR. HOOD:

Q. What do you pay in taxes a year?

A. I don't even know.

Q. What do you pay -- it's your primary residence.

A. Yes.

Q. Okay. So you pay, what, 8000, $6000?

A. I don't even know. Haven't looked at it lately.

Q. Do you think it's reasonable for someone with a second home to be paying 30 or $40,000?

A. I don't know. You're asking the wrong -- I don't know. I don't know.

Q. Okay. Well, I'm just trying to figure out where you and your group are coming from.

A. Our group is not concerned with -- with that. Not that we are unsympathetic to anyone's pain on Sullivan's Island. We're focusing on the -- we're focusing on bringing forward educational

programs for what we consider to be the treasures of Sullivan's Island.

Q. Are there any other people besides these nine that agree with you?

A. Yes.

Q. How many?

A. I don't know how many.

Q. Five, ten?

A. I would like to think that it's the majority of Sullivan's Island citizens.

Q. Name me some that agree with you.

A. Name you some that agree with you. Well, why?

Q. Because I ask you to and you're under oath and you have to answer my questions.

A. Well, that could take a long time.

Q. I'm -- go ahead.

A. The Hoyts (phonetic); the Parkers; the Middaughs; the Bugases, the Royches (phonetic); the -- I can't possibly name to you all of them. We have a voters list, registered voters and there are many on the voters list that we call for various programs that we put on and they are various supporters for various programs that we put on.

The answer to that question I think

would be in the elections. If a candidate is supportive of our views, we will support that candidate and the answer to that will be in ballot box.

Q. If you --

A. There are many -- there are many I feel.

Q. Who are the candidates that you and your group have supported in the past?

A. We supported Larry Middaugh.

Q. Anybody else?

A. We supported Mike Perkis. We supported -- we supported McGee. We supported Pat O'Neil. We supported the mayor.

Q. Anybody else?

A. I don't think so. I'd have to think councils back.

Q. How many votes can you turn out for an election?

A. I don't know. We're hoping the majority of citizens of Sullivan's Island are for supporting us.

Q. Have you ever had the majority?

A. I don't know.

Q. What is the majority?

A. Well, let's see. That depends on the election.
Q. For -- what's the majority to get elected to Town Council?
A. Let's see, for the last election?
Q. Sure.
A. I don't remember. I'll have to see the number. I think it was -- the person that won was over 375. I don't know.
Q. Can you muster 375 votes?
A. I don't know.
Q. Have you ever?
A. I don't know.
Q. Can your group get that many people to the polls to vote?
A. I don't know.
Q. Have they ever gotten that many people to vote?
A. I don't know.
Q. What's the most they've ever gotten to the polls?
A. I don't know. How would I know?
Q. Well, you said you had a voter registration list so I assume you went and looked at who voted and then you checked off to see how many

people that are like thinkers to you and your nine people that voted. You didn't do that?
A. We didn't keep a list of -- say that again.
Q. After the last election, did you go look and see who registered and signed up and went into the booth and voted?
A. We have a list of people that voted in the last election.
Q. Okay.
A. Yeah.
Q. Okay. How many of those agree with you -- you and your eight other steering committee members?
A. I don't know how many.
Q. Is it over 100? Over ten? Give me a ballpark number.
A. I can't -- I don't know.
Q. Well, you see, I think that you and your group are nine people and no more. Am I wrong?
MR. SHAHID: Object to the form of the question and testimonial aspect of it.
BY MR. HOOD:
Q. You're loud and clear at the Town Council but you're not but a handful of people and

none of you live on the front beach and none of you are going to have your property reduced in value by a million dollars and none of you care that it's going to happen to people that are going to have that happen.
Are those things wrong? Are we perceiving you and your group as something that it's not?
MR. SHAHID: Object to the testimonial aspect of the question and to the form of the question.
THE WITNESS: That was too many questions at one time. Can you reform that.
BY MR. HOOD:
Q. Sure. Is your goal to destroy the enjoyment of Sullivan's Island to people who have lived there for generations? Yes or no?
A. No.
Q. Are you aware that you're doing that to about 80 families enjoying living on Sullivan's Island being destroyed because of you and your nine friends?
MR. SHAHID: Object to the form of the question?
THE WITNESS: No.

BY MR. HOOD:
Q. Okay. Well, you are so you know it loud and clear now.
MR. SHAHID: Object to the testimonial aspect of the question.
BY MR. HOOD:
Q. For example, my client, Nicky Bluestein's grandchildren, if they try to walk to the beach, come back with welts from mosquitoes.
The last two sales of property on Sullivan's Island, one can cut to the high watermark, one cannot cut. The difference in property value is $765,000. That just happened in the last two months.
So if you don't think Tommy Hartnett is right, there's a comparable, a real number that really happened to two families.
MR. SHAHID: Object to the testimony presented by the --
BY MR. HOOD:
Q. So does that concern you that property values are dramatically getting affected by this dispute?
A. I am concerned. And like I said, I'm not unsympathetic but my belief is that the proper

handling of the accreted protected land will increase everyone's enjoyment of that area.

Q. And what does proper mean to you?

A. Healthy. Following the experts' guidance.

Q. Who are the experts?

A. Well, Council hired Coastal Science & Engineering to achieve those goals.

Q. Did you have anything to do with the decision to delete the reference to property value from the survey that Coastal Science prepared?

A. No.

Q. To consolidate ocean view with other categories?

A. To consolidate --

Q. Ocean view with other categories.

A. What does that mean?

Q. Well, the questionnaire came in from Tim Connor's group one way and went out to the public in another way and it's in my complaint and I've got a copy of it here so I'll show it to you. And I'm just wondering who took it upon themselves to change the questionnaire and whether you had anything to do with it.

A. We had nothing to do with the questions

of the questionnaire.

Q. Did you know that it got changed?

A. No.

Q. Did you like the fact that property value was deleted from what was asked of the public?

This is what came in from Mr. Connor, ocean view property value. Okay? Can you see it? It's circled there. Tim Connor, that's his recommended survey to ask the property owners what they think about what he's dealing with.

But what actually went out to the property owners was that questionnaire where property value is deleted and ocean view is stuck down here with two other categories -- two or three. Let's see what it is. It's views, beach access and public safety.

Did you have anything to do with that?

A. I mean, isn't that up to Council and the company?

Q. Does that to you look like an intentional effort to avoid getting input from the public of the impact this whole subject has on the value of real estate on the Island?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Does it look to me like what?

BY MR. HOOD:

Q. It was intentional to delete the concerns that the experts had about property value from feedback from the public?

A. Does it look -- all right. You have to tell me again.

Q. Okay. Tim Connor sends in his report, he's says why don't you do this survey of the town residents and let's ask them. What's important and let them grade it. And one of the categories is property value. Another one by itself is ocean views. When --

A. And they sent this out to the --

Q. When the form gets printed, it doesn't have any reference to property value at all. Does that concern you that someone did that?

MR. SHAHID: Object to the form of the question?

THE WITNESS: That the company did that?

BY MR. HOOD:

Q. No, the company didn't do it. The company submitted the questionnaire and when it got

sent out by the Town, it had those changes.

MR. SHAHID: Object to the form of the question.

THE WITNESS: I can't tell you the answer to the ins and outs of that. That's too complicated. That sounds like it's just a Town Council, a government affair.

BY MR. HOOD:

Q. As far as we know, the Town Council never voted on this change.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. What do you think the --

A. Are you just saying that so far as you know the Town Council --

Q. Well, we've asked Pat O'Neil and he said he didn't think the Town voted on it, the Town Council.

A. So the company has changed their mind.

Q. No, the company didn't do anything. It was the Town and someone in the Town changed the recommendation, the form that was recommended by Tim Connor's company. And when it got printed, property value was deleted. Do you know who did that?

MR. SHAHID: Object to the form of the

question.
THE WITNESS: I don't know who did that.
BY MR. HOOD:
Q. Did you hear Pat O'Neil tell Tim Connor at a meeting you should not consider property value, that's not part of what we've hired you to do?
A. Did I hear that? I think I heard that. I think I was present at that Council meeting.
Q. That'd be two of us that heard that.
Do you think that was appropriate for him to tell them not to be worried about property value?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I leave that up to Council Member O'Neil. I don't know personally what involvement it should or should not have.
BY MR. HOOD:
Q. Have you ever felt like Councilman O'Neil has dealt with you through e-mails repeatedly in violation of the Freedom of Information statutes in South Carolina --
MR. SHAHID: Object to the form of the question.

BY MR. HOOD:
Q. -- conducting Town Council business with you via e-mail?
THE WITNESS: Do I feel that that happened?
BY MR. HOOD:
Q. Yes.
A. No.
Q. And between you and the Town Administrator and Pat O'Neil has that happened, Town business being conducted by e-mail?
MR. SHAHID: Object to the form of the question.
THE WITNESS: The breach of the Information Act being breached by e-mail?
BY MR. HOOD:
Q. That's right.
A. Do I feel that that happened?
Q. Yes.
A. No.
Q. Over the years haven't you and Pat O'Neil had a lot of e-mails back and forth about this accreted land?
A. We have had some e-mails.
Q. And you've had some with Mr. Benke and

Mr. O'Neil?
A. Yes.
Q. But not other members of Town Council, correct?
A. We had other members of Town Council, all of them, over to discuss their views of the accreted land and the protection of it.
Q. You did not --
A. All of them.
Q. You did -- on these e-mails I'm talking about, not a meeting you had. The e-mails are between you, O'Neil and Benke, not the rest of the Town Council in most cases, correct?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I have e-mailed other Council members, absolutely.
BY MR. HOOD:
Q. But the majority of them are between you and O'Neil and Benke, correct?
MR. SHAHID: Object to the form.
BY MR. HOOD:
Q. Talking about accreted land?
A. I couldn't determine the majority. I don't know majority.

Q. Out of 100 of them weren't over 50 of them like that?
A. I don't know. I don't know. I don't know.
Q. You don't know?
A. I don't know.
Q. Now, you've lost your computer information -- you only have computer information back one year apparently. Tell me what happened there.
A. We took our computer to Staples and said clean this up for us, meaning get all the cookies out, et cetera. And they completely wiped out the hard drive much to our dismay.
Q. Was that on the advice or recommendation of anyone that you did that?
A. No.
Q. Anybody on your committee?
A. No. No.
Q. Were you aware at the time you took it to Staples that I had subpoenaed all of the e-mails the Town has?
MR. SHAHID: Object to the form of the question.
THE WITNESS: A year ago?

BY MR. HOOD:

Q. Yeah, it was a year ago.

A. A year to a year and a half ago this happened. No.

Q. Did it happen because you were concerned that I was ultimately going to subpoena your e-mails?

MR. SHAHID: Object to the form of the question.

THE WITNESS: No. I had no clue what you were doing.

BY MR. HOOD:

Q. So there's been no intentional destruction of e-mail communication between you and anyone on Town Council or employed by the Town --

A. No.

Q. -- dealing with the accreted land?

A. No.

Q. You and your husband use the same e-mail address?

A. Yes.

Q. And the same --

A. Well, back and forth.

Q. -- and the same would be true of the mutual address? There's been no intentional

destruction of e-mails to or from that address?

A. There has been no destruction of e-mails to and from that address?

Q. Your address and your husband's joint address?

A. What do you mean destruction of? We don't keep e-mails around, we delete them.

Q. You delete them. But then when you said that you took the computer to Staples and they wiped it clean, was that at your request that they did that?

A. No.

Q. And who at Staples did you deal with?

A. I don't know. It was a kid.

Q. At the Staples where?

A. Mt. Pleasant.

Q. Okay. Is there only one Staples in Mt. Pleasant?

A. To my knowledge.

Q. It's in the same shopping center where Whole Foods is?

A. Yes.

Q. And it was a kid. Boy or girl?

A. Boy.

Q. And he worked in what department?

A. The computer department.

Q. Okay. And what was he asked to do?

A. Clean it up.

Q. What does that mean?

A. Take out what I heard was called the cookies of the -- the trash. The -- clean it up so it would run faster, whatever you delete, whatever you do. Clean it up.

Q. Before it was taken to them, was there any backup of what was on it?

A. Yes, and we lost it.

Q. Where was it kept, the backup?

A. My husband had it somewhere and we have searched the entire house. We think that it was thrown out. We had backup and it's now -- and it was a tragedy for us.

Q. Why is that?

A. The last pictures of my mother were on there before she died. Our last correspondence. Much memorabilia and things that were important to us.

Q. Okay. Have you given up hope of trying -- of finding that backup disk?

A. Yes, we have.

MR. SHAHID: Would you mind if we took

a bathroom break right now?

MR. HOOD: Whatever you need is fine.

(A recess transpired.)

BY MR. HOOD:

Q. How much did you contribute to Pat O'Neil's campaign to get elected, this last election when he was up?

A. I don't know if we contributed anything. I don't know if we did.

Q. How about your group of nine people?

A. As a group, we didn't contribute as a group.

Q. Have you ever contributed as a group, either in the name of the current group or some other group, to a campaign of somebody on Town Council in Sullivan's Island?

A. In the name of our group or someone else's group, have I ever contributed to --

Q. Right.

A. -- a campaign?

Q. Right.

A. Not to my knowledge.

Q. You're called currently Sullivan's Island --

A. Ders.

Q. Sullivan's Islanders. That's the name of the group?
A. The Sullivan's Islanders Group.
Q. And what was the name of the group before that?
A. That group is defunct. It was called the Islanders for Conservation that I was on.
Q. Okay. And from when to when did it exist?
A. I'll have to think back. I would have to give that a good ten years ago. And, you know, approximately. Maybe, you know -- 2000 -- after 2000 -- no. I don't know. I can't think.
Q. So from '90 to 2000?
A. '90? No.
Q. 1990?
A. No.
Q. Okay. Well, what was the rough time period as best you can remember?
A. Maybe 2002 until --
Q. Until?
A. To 2005, 6. In that approximation.
Q. Okay. So it existed for four years and the new group has been in existence since 2006?
A. I would -- maybe -- I think we have

been working together for about three years, maybe three to four.
Q. About three years?
A. Yeah.
Q. Okay. Do you have any formal meetings where notes are taken or there's recordings of proceedings?
A. We don't have proceedings. We're a grass roots organization. We sit around the table. We plan events. We drink coffee. We drink wine. We have peanuts. It's really very, very simple.
We plan our events. We look at a voters registration list of who would like to come to this meeting of the -- this trolley event. Who would like to come to the Birds of Prey. Who would like to come to hear Karl Ohlandt from Spring Island talk about land management. You know, that sort of thing and get -- put up signs and have events.
Q. Do y'all have dues?
A. We don't have dues.
Q. Do you have money to operate on?
A. We contribute to a kitty when we need to.
Q. Okay. And so how much money is in the kitty?

A. None. Depends on the event that we have, who we're getting and how much they cost.
Q. Is part of your purpose to give input into public opinion and public information dealing with the accreted land?
A. To do what?
Q. Give input and impact public opinion dealing with the accreted land.
A. Do we wish to impact public opinion?
Q. Yes.
A. With the accreted land. We hope to educate people as to the benefits and the treasures that are of the accreted land, yes.
Q. And when Pat O'Neil sent you all of the pleadings and all the discovery of this case, did you read it all?
MR. SHAHID: Object to the form of the question.
THE WITNESS: All of the pleadings and all of the discoveries.
BY MR. HOOD:
Q. Yes, he sent you our complaint, their answer, our request to admit, our interrogatories, our request to produce. You've seen all that.
MR. SHAHID: Object to the form of the

question.
BY MR. HOOD:
Q. That's one of the e-mails you've given us today.
A. I have seen your complaint. What are the other things?
Q. It's called discovery. It's their answer, interrogatories, questions under oath to the Town, you've seen those?
A. I have not seen those yet.
Q. Request to produce, asking the Town to produce documents, you've seen those?
A. I haven't read everything. I did read your complaint.
Q. Okay.
A. I read the lawsuit.
Q. Why did he send --
A. I read my subpoena.
Q. Why did he send you, a member of the public, something dealing with the Town's litigation?
A. That is --
MR. SHAHID: Object to the form of the question.
THE WITNESS: I don't know why he sent.

Perhaps it's public information. I don't know. Perhaps, you know, it's public information. Maybe my husband asked for it. I don't know.

BY MR. HOOD:

Q. Well, over the years, you and Pat O'Neil have had a lot of communications about the accreted land in the form of e-mails. Why is that?

A. To gain knowledge of what the law is so that we will know how to increase our knowledge base and know how to, you know, fit that all into -- into -- well, you know, that's about it. For our knowledge.

Q. How many trees have you personally planted in the accreted land?

MR. SHAHID: Object to the form of the question.

THE WITNESS: We do not plant trees. We have never planted trees in the accreted land nor would we ever plant trees in the accreted land.

BY MR. HOOD:

Q. Does that apply to you?

A. Yes.

Q. Your testimony is you've never planted a tree in the accreted land?

A. Never.

Q. Has your husband?

A. Never.

Q. Any of the other people on your committee?

A. To my knowledge, none of our people have done that.

Q. Well, you saw in my brief where I said Rick Reed wrote an e-mail saying plant, plant, plant, plant.

A. I think he was being facetious. I think he was being reactionary and just being facetious.

Q. Well, what if --

A. It's against the law to plant or to cut down anything in protected land and we are aware of that.

Q. The fire department has some cedar trees they were giving away. Did you get any of those?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I did not. I wish that I had. I would have planted them in my yard.

BY MR. HOOD:

Q. Would you like to have a wall of trees

around your yard?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I do have a wall of trees around my yard.

BY MR. HOOD:

Q. There are no trees in your front yard.

A. Well, true, those are plants in my front.

Q. How many times have you had Town Council over to your house?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. To talk about the accreted land.

A. Once. All of Town Council individually.

Q. Okay. Were any decisions made?

A. No. We just discussed what their points of view were.

Q. And were all members of Town Council present?

A. One at a time.

Q. You did not have the whole group at one time?

A. No.

Q. You had individuals one at a time? What was it that you wanted to learn from this meeting?

A. What their views were of the accreted land.

Q. Okay. Let's take each Council member. What did they tell you? The mayor first.

A. All of them said that they were interested in a responsible handling of that. They -- that was pretty much across the board. Responsible handling. It's been a while that we've done that.

Q. How long ago was it?

A. Before -- let's see -- three -- over three years ago. Before the -- not before the last election. Not before the last -- let's see. One, two, three. So it's been three years since then. About five years ago maybe.

Q. Have you had any Town Council members over since then?

A. Let's see. After the Porche (phonetic) or Dr. Richard Porche walk that we had through the accreted land where he was giving his program, Madeleine McGee came over.

Q. Anybody else?
A. That was all on that occasion.
Q. Any other occasion anyone else from Town Council has been over?
A. You know, not that I can remember from Town Council.
Q. How about Mr. Benke, the Town Administrator?
A. Excuse me?
Q. The Town Administrator, has he been over to your house?
A. No.
Q. How about Randall Robinson, the building inspector?
A. Only to deliver notices and whatnot, you know.
Q. Now, he owns some property or his family owns some property on the front beach in front of your house, doesn't he?
A. Yes.
Q. Have you ever objected to the Town allowing that property to be cut to the ground repeatedly?
MR. SHAHID: Object to the form of the question?

THE WITNESS: Have I objected to that property being cut to the ground?
BY MR. HOOD:
Q. Right, all the vegetation cut.
A. I didn't know that all the vegetation was cut to the ground at that property.
Q. That hadn't happened every year?
A. No. Cut to the ground at that property.
Q. Are there any trees growing on that property?
A. Yes.
Q. How about Mr. --
A. On that property? Wait a minute. On Randy's property?
Q. Yes.
A. On the accreted land, yes.
Q. They're trees?
A. Trees.
Q. Okay. How about this fellow, Larry and Susan Middaugh, do you know whether they've cut any trees down in their yard without permits? They're members of your steering committee.
A. I don't know of any trees they've cut down without permits. I don't know.

Q. Would you be surprised if they had done that?
A. They're law abiding citizens is all I can tell you.
Q. So if there are stumps in their yard and there are trees that used to be there and there were no permits obtained, would that be law abiding?
MR. SHAHID: Object to the form of the question?
THE WITNESS: I don't know the laws of cutting down trees in one's yard. I'm sure that there's a diameter involved of what can be done.
BY MR. HOOD:
Q. Okay. How about Rick Reed, has he cut any trees in his yard?
A. I don't know.
Q. Have any of these people done anything on their own property or on someone else's property that you know of that wasn't proper?
MR. SHAHID: Object to the form of the question.
THE WITNESS: No, and we're not involved in people's yards.
BY MR. HOOD:
Q. How often do you or your husband talk

to Pat O'Neil about the accreted property?
A. Infrequently.
Q. And have all the communications that have come from Pat O'Neil come through his e-mail site musc.education, EDU?
MR. SHAHID: Object to the form of the question.
THE WITNESS: Huh?
BY MR. HOOD:
Q. Every e-mail I've got that Pat O'Neil sent you or your husband has the e-mail address oneilp@musc.edu. Have you ever gotten any e-mails from Pat O'Neil other than from that e-mail address?
A. I don't know. I don't pay attention to the address.
Q. Did Pat O'Neil ever tell you that by using his computer at work was a violation of his -- the rules of the Medical University?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. Has he ever said that to you?
A. I don't -- I don't think so, no.
Q. Okay. You don't work at the Medical University, do you?

A. No.
Q. And your husband doesn't work there, Medical University?
A. He doesn't work at the Medical University.
Q. Okay. So what their rules are, you don't know?
A. I don't know.
Q. What was your answer?
A. I don't know.
Q. Have you ever been involved in any communication involving the cutting of vegetation in front of Mr. Bluestein's house?
A. Have I been involved in cutting vegetation in front of his house?
Q. In any communication about that.
MR. SHAHID: Object to the form of the question.
THE WITNESS: Involved in the cutting of vegetation. I -- you'll have to define that.
BY MR. HOOD:
Q. Well, there's an e-mail that's signed Norm to Pat and he's mentioned Nicky Bluestein in the e-mail.
A. Okay. Oh, okay. Okay. Now, give me

the question again.
Q. Why is your husband writing to Pat O'Neil about Mr. Bluestein?
A. This is the incident where I don't think it was just Bluestein's property but over 30 trees illegally were cut down in the protected land in that area and this was the incident that he's speaking of.
Q. Okay. Are y'all the watchdogs and the police of what's cut and what isn't cut in the accreted land, you and your husband?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I would not say we're the watchdogs. We -- I particularly am out there frequently and the amount of trees that were cut there are -- were quite blatant and noticeable.
BY MR. HOOD:
Q. But you've never said anything like that about Randall Robinson's property?
MR. SHAHID: Object to the form of the question.
THE WITNESS: No, I've never said anything like that about Randall Robinson's property. I don't know what you're thinking of.

The protected land in front of his property is what you're talking about?
BY MR. HOOD:
Q. Yes.
A. No, I've never said anything about that.
Q. Variances have been granted to him to cut and not to the neighbors on each side repeatedly, you don't know that?
MR. SHAHID: Object to the form of the question.
THE WITNESS: Well, you have to apply for -- to Town Council to have your land pruned according to the rules by a company that Town Council hires.
BY MR. HOOD:
Q. Okay.
A. So it's up to the landowner to do that.
Q. Right. Do you and your husband go out and make sure the landowners follow those rules?
A. We don't go out specifically for those purposes, no.
Q. You say you're out there often and walking in the accreted land. Where -- what stations are you talking about where you do that?

A. I try to hit all of them really because they're all varying and that's what we like out there, the diversity that can happen.
Q. Okay. And so you have walked the entire Island?
A. Yes.
Q. And any snakes attacked you?
A. Never.
Q. Rats?
A. No. I've never seen a rat and I have only seen one Black snake in my entire walk out there.
Q. How about criminals? Anybody ever try to attack you?
A. Never.
Q. May I have that piece of paper back. You allergic to poison ivy?
A. I am.
Q. Have you gotten any out there?
A. I have gotten poison ivy.
Q. A lot? Often?
A. No.
Q. There's a lot out there, isn't there?
A. I know what to avoid.
Q. What was going on with this e-mail

about front beach property owners cutting in the accreted land and talking to Everett Preston?

A. Hard to read my husband's run-on.

Okay. Now, what do you want to know?

Q. What was going on?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I don't know the property that he's talking about. But I just can't -- know if I can help you on that. It just sounds like something that he was checking on to make sure that things were straight according to the law.

BY MR. HOOD:

Q. Okay. And what is the phrase in this e-mail, it's talking about you calling up the troops? Who are the troops you are going to call up?

A. This is Mary Ellen to Alice Ann Whitakee (phonetic). Yes, absolutely. I mean, when we go out there and see something that's done that is wrong, then calling up the troops would mean alerting my neighbors, do you see this, et cetera.

Just -- and we bring it forward just as often as we can because we are involved in nurturing, protecting that land. And I was on the

turtle team for a couple of years there.

And, let's see, this is 2004. Alerting friends and neighbors and those that I thought would be supportive and needed to know, just look at this.

Q. Okay. Talking about neighbors, you don't know who lives in front of you, who lives to the side of you?

A. Jim Rocco one side and Nathaniel and Amy Hoyt other side.

Q. And who lives behind you?

A. Well, there's nobody behind me.

Q. Okay. And are those the neighbors you'd call up?

A. Well, and -- sure, among others. I would alert all of my friends and say look at this, yes.

Q. Do you have a -- when you want to alert your friends, do you have a set e-mail address?

A. No, we don't do that.

Q. Group? But you can punch a button and it goes to a certain group?

A. No, it's just going to the telephone. Going to the telephone.

Q. You use the telephone?

A. That's right.

Q. You don't use your e-mail and have a group address so you can send an e-mail to 20 people?

A. No.

Q. Or ten people?

A. Telephone, door to door.

Q. Now, when you say you're going to have in this e-mail people there at a meeting, what do you mean by people?

MR. SHAHID: Object to the form of the question.

THE WITNESS: People who had concerns about -- oh, people that were concerned about conservation. That's easy. Including our steering committee members, I'm sure. What year is this?

BY MR. HOOD:

Q. Talking about conservation, have you or any of the members in this group of yours, these nine people, ever given an easement to any conservation organization?

A. Given an easement.

Q. Over land they own.

A. No.

Q. You know what I'm talking about? Like the Open Land Trust easement for the 90 acres we're

discussing. Y'all ever -- do you own any land anywhere where you put an easement on it --

A. No.

Q. -- for the good of conservation? Make it green?

A. We don't own any land that is capable of being in the --

Q. Do you know how many thousands of acres the people that you're fussing with that live on the front beach that put in conservation easements including myself? Do you know that?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Do I know the number of front beach people that --

BY MR. HOOD:

Q. Who have put land in easements for conservation.

A. I don't know of the number.

Q. It's considerable.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. Okay. So what do you mean when there are many who know of your and Mike's effort?

MR. SHAHID: Object to the form of the

question.

THE WITNESS: Let me see.

BY MR. HOOD:

Q. It's highlighted in yellow for you.

A. This must have been when everybody was looking for different companies. This is the real estate committee looking for land management companies, I assume. There's a group of experts at Dewees Island.

Q. Tell me about Dewees. Do you know what's happened at Dewees with regard to real estate value because of trees?

A. I do not.

Q. Houses have been cut in half in value.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. You don't know about that?

A. I don't know about that.

Q. Well, if you have any friends that live on Dewees, you might ask them about it.

MR. SHAHID: Objection.

BY MR. HOOD:

Q. Let's look at the next one. This is a question from you to your friend Pat O'Neil. Why are you writing him and asking him what you should

do?

A. It sounds to me that I was trying to clarify what went on -- clarify in my mind what went on at this council meeting.

Q. Okay.

A. Trying to clarify what went on in this council meeting.

Q. Now that you read it, let me ask you a question about it, please.

A. I mean, I was there but I needed clarification.

Q. Should I send this and all information that I'm gathering to all Council members. Why are you writing to Pat O'Neil asking for that permission?

A. Let me see the date again. Oh. I think that I had gathered from the computer at that time how other barrier islands handled their land responsibly and I had information from North Carolina Barrier Island Coast and I had information from our coast. And I was asking him should I send this bulk of information to all Council members or just the real estate. I would imagine the real estate committee which is involved with the -- not only properties but the accreted land as the real

estate committee and he was on the real estate committee.

Q. Okay. Do you remember when Melvin Anderegg was the mayor of Sullivan's Island?

A. I do.

Q. Do you remember a month after the deed was signed by him as the mayor to the Open Land Trust to the 90 acres of accreted land he was asked by the Post and Courier what the deed meant with regard to scenic enhancement and he said people owning front beach property pay a high price for the property and should be allowed to cut back growth. The whole purpose of having front beach property is to have a view of the ocean. Do you remember that?

A. I wasn't witnessed to his saying that.

Q. Did you remember reading it when he said it and it was quoted in the paper?

A. I didn't read it in the paper. I wasn't present at that council meeting when he said that.

Q. If you owned front beach property, would you agree with that thought process that you pay to be on the front beach, you pay to see and smell the ocean breezes and see the view? You pay a premium for it so you should have a right to cut

vegetation that interferes with it?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Well, first, no individual can go out there and cut in front of their land in protected land. They have to ask Council for a permit and Council has to hire the company to come out and trim according to the law.

BY MR. HOOD:

Q. The property owner pays for it, not the Town, you know that?

A. Yes, I do.

Q. How is the Town going to afford to do anything any differently in the accreted land? They don't have the money.

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. According to what we read in the paper, this lawsuit has bankrupted them.

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. Reduce garage collection, reduce the number of vehicles they have, change the playground,

all because of this lawsuit according to one Town Council member. Have you read that in the paper?

A. Yes, I did.

Q. Does that worry you?

A. Absolutely, yes.

Q. Does it make you proud that you're the reason we're having this fight?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. You and these nine people.

MR. SHAHID: Object to the form of the question.

THE WITNESS: We are not the reason.

BY MR. HOOD:

Q. Then why not agree to let us have the ordinance that was in place when this deed was signed in '91. Cut everything to 3 feet and enjoy the breeze and views and pay the taxes because you're enjoying these views and breeze.

MR. SHAHID: Object to the form of the question.

THE WITNESS: We believe in responsible handling and management of the land for the health of the land, for the benefit of the majority of

Sullivan's Island residents. And there's -- you know, there's no -- who says that a view is not available.

You know, we are not in power. The company is in power to -- and Council is in power to determine such a thing.

BY MR. HOOD:

Q. Do you know the Blooms that live right in front of you on the ocean?

A. The Blooms.

Q. 1700 block?

A. No.

Q. They've tried to sell their house for several years. They've reduced the price of the house several million dollars. They've had three people walk out on the deck ready to buy the house and then when they turned to look at the view of the harbor, all they saw were trees and they left. Does that story concern you?

MR. SHAHID: Object to the testimony. Object to the leading. Object to form of the question.

BY MR. HOOD:

Q. That a neighbor of yours has that kind of problem because of the trees?

A. It's my opinion that it'd be just as easy to find a person to buy the land that was in great appreciation that there's protected land in front.

Q. Yet none of your nine people that have that appreciation live on the ocean, do they?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. None of them are front beach property owners?

A. None of them are front beach property owners.

Q. What about on the marsh? The marsh is owned by the public.

A. Yes.

Q. Should you have a right to build a dock across the marsh?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. It's certainly going to block the view of some of your neighbors.

MR. SHAHID: Object to the form of the question.

THE WITNESS: There are zoning laws for that in place.

BY MR. HOOD:

Q. Have you gotten involved in opposing docks being built on the back of Sullivan's Island?

A. Yes.

Q. And how about if trees were planted beyond the property line of people with marsh lots so as they would -- like cedar trees and they would grow up 30 feet tall and block the view of the sunset in the marsh? Do you think that would have an impact on the value of those marsh lots?

A. If people planted trees beyond --

Q. If the Town --

A. -- their property line?

Q. Yes, if the Town planted trees.

MR. SHAHID: Object to the form of the question.

THE WITNESS: It's against the law for people to plant trees in land that's not theirs that is protected.

BY MR. HOOD:

Q. Right. Have any of these people done that?

A. No.

MR. SHAHID: Objection.
THE WITNESS: Not to my knowledge, no.
BY MR. HOOD:
Q. You don't think any of those people have gotten cedar trees and gone out there and put them in the sand dunes?
A. I do not.
MR. SHAHID: Objection.
BY MR. HOOD:
Q. Why are they all growing in a straight row?
A. I don't know. I don't know.
Q. You've seen them, they are growing in a straight line?
A. Where?
Q. From where you live to the end of Sullivan's Island going east.
MR. SHAHID: Object.
THE WITNESS: I don't know where you're talking about. Tell me where.
BY MR. HOOD:
Q. In the 90 acres of accreted land have some cedar trees in it?
A. Yes.
Q. When you look at them, they look like

to me they were planted in a row intentionally.
MR. SHAHID: Object to the testimony.
THE WITNESS: I have not seen a row that you're speaking of. A row.
BY MR. HOOD:
Q. Okay. If someone did plant them, you would agree with me that would not be proper?
A. It's against the law, yes.
Q. Okay. But yet the people that live there now have to deal with them or they can't cut them. Now, each cedar tree is going to take up a pretty big view of their enjoyment, isn't it?
A. I don't know.
Q. Do you have any cedar trees in your property?
A. Yes, I do.
Q. How big is it?
A. Depending on the variety. We don't have any red cedars and that's the one that's indigenous to South Carolina. We don't have red cedars. We've got other -- other kinds.
Q. And the ones out in the accreted land, what kind are they?
A. I'm sure that there are a variety. The ones that are indigenous and valuable are --

Q. They're valuable?
A. To --
Q. To whom? A cedar tree?
A. Anything that's indigenous as a native plant is valuable.
Q. So it's like a popcorn tree, it's got value?
A. Popcorn tree is invasive.
Q. Who told you that?
A. Department of Natural Resources, Town Council. This is common knowledge.
Q. How about the three blocks of people that have willow trees that are two-story high in front of their houses starting at Station 26 going to the end of the Island there? Are those -- are those natural trees for Sullivan's Island, those willow trees?
A. Willow trees are indigenous to South Carolina, absolutely.
Q. Are they a good tree?
MR. SHAHID: Object to the form of the question.
THE WITNESS: What do you mean a good tree?
BY MR. HOOD:

Q. Do they do something good for nature?
A. Sure.
Q. We've got two or three blocks of people where that is the problem, willow trees.
A. Yes.
Q. The fact that they can't cut them to 3 feet, is there something good about that?
A. You mean in the protected land?
Q. Yes.
MR. SHAHID: Object.
THE WITNESS: They can't cut anything. You mean to have Town hire a company to have --
BY MR. HOOD:
Q. Yes, take them out. Let them enjoy the views of the ocean that they paid for.
A. You don't want to destroy the natural habitat in protected land. Things can be handled responsibly.
Q. What's natural about a willow tree?
A. Excuse me?
Q. What is natural about a willow tree and value to anyone?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:

Q. Would you plant some in your yard?
A. Sure, but they won't grow there.
Q. So if I go buy some and bring them to your house, you will plant them in your yard, willow trees?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I tried a willow tree in my yard and it wouldn't live. So, yes, we love willow trees.
BY MR. HOOD:
Q. I'm not talking about a willow tree. You're talking about a weeping willow tree. I'm not talking about that. I'm talking about the bushes, they're not trees, they're called willows. There are four blocks of them.
A. Willow bushes.
Q. Yeah, they're bushes.
MR. SHAHID: Object to the testimony.
THE WITNESS: I don't know what you mean by willow bushes. Give me the --
BY MR. HOOD:
Q. Okay. I thought you walked the accreted land. You've never seen any willow bushes out there?

A. Do you mean immature trees?
Q. No, they're not trees.
A. Give me the Latin name. Give me more than willow bushes. I don't know.
Q. What's your educational background?
A. I have a BA from the University of South Carolina.
Q. In what subject?
A. Art.
Q. Any further degrees?
A. No.
Q. Any courses, seminars, any training you've had with regard to horticulture?
A. Formal training, no. I've taken classes. I've taken seminars. I've taken -- I've followed lectures by Richard Porche. A friend of mine is head of the Native Plant Society in Virginia and we go out and identify what's invasive and what's not in accreted land. What should be taken out and what should -- what is valuable as a natural habitat. Good ecology out there. And I love studying that.
Q. And when's the last time you did that studying? Where you walked out there and looked at invasive species?

A. January.
Q. This January? And how many different invasive --
A. Oh, beginning -- end of December, January.
Q. How many invasive species did you see?
A. Depends on what part of the land we were walking in. There are many -- there are many popcorn which are also Chinese tallow trees and invasive foreign species of tree. And there are many of them out there.
Q. So what you'd like to do is selectively say this is invasive, this isn't. You can take this out but leave this?
MR. SHAHID: Object to the form of the question.
THE WITNESS: What I would like to do personally?
BY MR. HOOD:
Q. Yeah.
A. You mean, if I were in charge?
Q. Yeah, right.
A. Foreign, harmful, invasive species should certainly be removed in a protected good ecosystem.

Q. And when you end with that good ecosystem, what value does it have to the people who live there?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. And particularly the people that live adjacent to it.
A. Having a natural, protected land that you can walk through in good condition and healthy and -- is a rare privilege. You can walk out of your door and into the protected land and watch the birds and...
Q. What kind of birds are out there?
A. Well, several rare, endangered species. Painted Buntings are out there. Ground --
Q. Have you seen the Painted Bunting out there?
A. I have not.
Q. I haven't either and I've lived longer than you.
MR. SHAHID: Object to the testimony.
THE WITNESS: But --
BY MR. HOOD:
Q. What else have you seen out there?

A. Ground doves are in danger. Threatened. Threatened.
Q. And ground doves don't use trees. What else is out there?
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. Let's talk about birds. What else is out there? There are not any birds out there, are there?
A. Excuse me, there are.
Q. Tell me what kind.
A. There are song birds that migrate every year that nest in the accreted land.
Q. You've seen them?
A. Yes.
Q. Okay. Well, I guess Station 21 -- 27, 17, whatever, wherever -- you live at 17, don't you? You've got the --
A. Well, I'm behind the Sand Dunes Club.
Q. Sand Dunes Club. So you've got big trees in front of Sand Dunes Club I believe and in their yard, big oak trees?
A. In front of Sand Dunes Club?
Q. Yeah.
A. There are not very many big oak trees

there.
Q. What is your group's view about the people who live at the east end of the Island and are having erosion problems? Do you think they should be able to put sandbags out and protect their property?
A. That is an entire science that involves federal agencies and you have to be very careful of what is put out there because often you can cause erosion on the far side of the barrier that's put up. There's been a committee that's been working on what should and should not be put out there.
Q. Have y'all -- has your group taken a position on that?
A. Well, on the fringes, we've studied that and we -- we know that a hard wall -- seawall put out there would cause erosion on the far side, that would be on the -- heading south.
Q. Well, do you think that if someone has water coming under their house they should be allowed to stop the water with sandbags?
A. That's between them and the Federal government that's involved in that sort of rule.
Q. Have you gotten involved in protest about that, allowing them to do that?

MR. SHAHID: Object to the form of the question.
THE WITNESS: Have I gotten involved in a protest? I don't think that I've voiced a protest against that.
BY MR. HOOD:
Q. Okay.
A. But I'm opposed to any irresponsible doings on a fragile barrier island environment.
Q. You ever been to Bull's Island?
A. I have not. I've been to Capers and Dewees and not Bull.
Q. Did you try walking through Capers?
A. A little bit.
Q. It's a true maritime forest. How far did you get? 5 feet, 10 feet?
A. It was too hot for me to go very far. I would love to explore it, though.
Q. You have snake boots on?
A. No, I didn't have snake boots on.
Q. Well, it's covered with rattle snakes. How about Sullivan's Island?
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. How about Sullivan's Island, do you

have rattle snakes in front of your house?
A. No, I have never seen one.
Q. I've got a dead dog because of one.
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. Golden Retriever killed in my front yard by an Eastern Diamond Back Rattler that I later killed. They're there.
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. What is good about the accreted land for the people that live adjacent to it?
A. They have protected land that's in a land trust between them and the ocean where no houses can be built.
Q. Is that a good thing?
A. That's a good thing.
Q. And if you take away their enjoyment of a sunrise or a moonrise or a ship coming in and out of the harbor, is that a good thing?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I don't know. That would depend on the individual, what they wanted to experience.

BY MR. HOOD:

Q. Where you live you don't see any one of those three things. You don't see a sunrise, you don't see a moonrise and you don't see a ship coming in and out of the harbor.

A. Now, on my upper floor, I can see all of the above.

Q. You can? Do you go up there often?

A. Whenever I want to.

Q. Is that often?

A. Sure.

Q. Do you enjoy that?

A. Yeah.

Q. Do you like having a view from your upper floor?

A. I like the view on whatever floor I have.

Q. If someone took the view away from your upper floor where you didn't know the water was out there, would you like that?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Well, I'm not allowed to have an opinion of oak trees that grow up in people's yards. I mean, if that is the issue, it's

like --

BY MR. HOOD:

Q. That's not issue. I said block your view. I didn't say a specie of tree.

A. It would be out of my jurisdiction to -- you know.

Q. Would you just sit back and take it? It's not your jurisdiction so I'm going to lose the view I've got from --

A. I have no choice.

Q. You have no choice?

A. These are in people's yards. Sure.

Q. So if they have trees that grow up and you lose your view, that's just the way it is? You have no choice in, no control over what happens somewhere else?

A. In somebody else's yard, I have no control.

Q. Okay. Has that happened to y'all? Have you lost any views because of something that happened in someone else's yard?

A. Sure, a neighborhood's oak tree grew up. We used to be able to see this strip of land over here, ocean over here and one of their oak trees grew up. But there's nothing that I can do

about the oak tree in the neighbor's yard.

Q. Which neighbor is that? Where is that oak tree?

A. Probably one of the Haygood's. I don't know. And others. I don't know.

Q. Have you planted any trees in your yard?

A. Yes.

Q. What kind of trees?

A. Cedars. Pear. Oh, I don't know. Just, you know, pittosporum and ligustrum and whatnot.

Q. So those are hedges?

A. Uh-huh.

Q. You're answer is yes? They're hedges?

A. In the back.

Q. Yes.

A. The pittosporum and the ligustrum, yes.

MR. HOOD: Let's take a five-minute break.

(A recess transpired.)

BY MR. HOOD:

Q. Did you or your husband pay Professor Josh Eagle to talk to Town Council?

A. We took up a kitty among the steering

committee to bring Josh Eagle in.

Q. The steering committee being these people in Exhibit 1?

A. Uh-huh.

Q. So how much did y'all end up paying him?

A. It was between 1000, 1500.

Q. Did you get what you were paid for?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Did we get what we paid for? I don't know about lawyers' fees, professors' fees and whatnot. We got a letter that was given to Council written out and we got a testimony -- or not a testimony but a -- he gave a presentation at one of the Town meetings.

BY MR. HOOD:

Q. Okay. Have you hired or your steering committee hired anybody else besides him and paid them a fee?

A. We brought in Karl Ohlandt from -- a land manager from Spring Island. We brought in Dave Achey who's involved with Kiawah and their management. And we brought in Birds of Prey. We gave them a pittance but at the end they didn't want

any sort of payment.

When we brought in -- well, we had the Trolley Tour with Roy Williams, we bought him a dinner. He was happy to do the tours of the old homes. When we brought in the turtle team, we gave them a donation. That's all that they asked for. And let's see, who else did we bring in.

We brought in Coastal Conservation League and they didn't cost anything for their presentation about the air quality. Let's see, who else did we bring in.

So, yeah, I think that both Ohlandt and Achey charged a fee. It wasn't exorbitant that we took up a kitty for.

Q. Any written reports from any of these people that you brought in? Letters or opinions? You said there was one from the lawyer. Anybody else?

A. Yeah, there's one from the lawyer. Letters to Council?

Q. No, just opinions that y'all have. Something they put in writing.

A. Yeah, we've studied what they've said and I don't know if we've put it in writing but we studied what they've said as our education process.

Q. Okay.

A. As well as, you know, everybody else that attended their events.

Q. Did you have any ongoing work that's being done by Eagle?

A. No.

Q. Do you or any of your people on the steering committee intend to run for Town Council?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. To your knowledge?

A. No.

Q. Did you and your group approve the people the Town hired to do the study of the accreted land? Mr. Connor and his company.

A. They seem to have some good people involved. A good -- with good education and good background and what they do and what they've done.

Q. Is Pat O'Neil a member of your group?

A. No.

Q. Any Town Council member is a member of your group?

A. No.

Q. Has he contributed any money to any of

your group?

A. No.

Q. Has any other Town Council member?

A. No.

Q. When the questionnaires were sent, the green forms, did you participate in distributing those?

A. For the -- that the company put out?

Q. Yes.

A. No.

Q. Did you fill out one?

A. I'm sure we did.

Q. And of course if it had a place for property value of property adjacent to accreted land, that wouldn't in your view affect your property?

A. True.

Q. Who's Dr. Levine?

A. Professor, College of Charleston that was hired by Town Council to give the report of what's out there in the accreted land, the protected land.

Q. Did he prepare or submit a written report to the Town?

A. He did.

Q. Who do you feel that a representative who's elected to Town Council represents?

A. Who do I feel that an elected official represents?

Q. Yeah, in your opinion, who do they represent? An elected Town Council member on Sullivan's Island.

A. They represent the citizens of Sullivan's Island.

Q. Do they represent the citizens that don't live there year-round?

A. As well as the property owners, yes. Yeah.

Q. Not according to Pat O'Neil. Do you agree with that?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. He doesn't represent somebody unless they live over there year-round apparently.

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. So he doesn't represent me because I might not live there for a month or two.

MR. SHAHID: Object to the form of the question. Object to the testimony.
BY MR. HOOD:
Q. But I vote there.
Do you agree that that's the way it ought to be?
A. I don't know that he does that. I don't know that he does that.
Q. Okay. If assuming I'm correct anyone on Town Council feels like they only represent full-time residents of Sullivan's Island, not people who just own property, but maybe don't live there year-round, would that be appropriate?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. In your view of how Government should run.
A. I don't think that they're allowed to do that.
Q. And if they were allowed to do that, would you agree with it?
A. I don't know. It sounds like an odd question to me. I don't know.
Q. Well, I thought the answer was odd too.

MR. SHAHID: Object to the --
THE WITNESS: You --
BY MR. HOOD:
Q. I'm saying Pat O'Neil doesn't represent me yet I own an oceanfront house, I pay $32,000 a year in taxes --
A. I don't know why he doesn't represent you.
Q. -- and I vote over there but he doesn't represent me.
A. I don't know why he doesn't represent you.
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. Okay. Why would he not represent me equally with you, for example?
MR. SHAHID: Object to the testimony.
THE WITNESS: I don't know that he does.
BY MR. HOOD:
Q. Okay. If he said that, would you agree with it that he doesn't represent me?
A. If Pat O'Neil said that he does not represent you.
Q. Right. Because I don't live there all

yearlong.
A. I don't know. I would guess that -- I don't know. I just going to have to say I don't know to that because I'm too cloudy inside to know exactly what you mean by that.
Q. Well, do you believe a Town Council member has a fiduciary duty to people who own real estate on Sullivan's Island?
A. And I believe he does represent you.
Q. Do you believe they have a fiduciary duty, number one, to property owners on Sullivan's Island by being a Town Council member.
MR. SHAHID: Object to the form of the question.
THE WITNESS: Do I believe that he has a duty to represent you.
BY MR. HOOD:
Q. A fiduciary duty.
A. All citizens of Sullivan's Island.
Q. I'm talking about me right now.
A. I don't -- I don't know. I don't know.
Q. No, I don't know how you -- I'm trying to find out how you view your life as a resident of Sullivan's Island and your representatives. Do you consider Pat O'Neil to represent you?

A. Yes.
Q. Okay. Do you consider that Pat O'Neil has a fiduciary duty to you and your family to maintain the value of your real estate and not do something to decrease the value of your real estate?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I don't know if they have anything to do with the value of your real estate.
BY MR. HOOD:
Q. For example, to answer your concern and the way you've answered the question, if the Town Council passed an ordinance that reduced the value of your property because of what the ordinance said by a million dollars, do you believe that they would be violating --
A. I guess someone would have to prove that. I don't know.
Q. This is hypothetical question. Assume I'm right. Town passes an ordinance that affects your house -- what street are you on?
A. I'on.
Q. What number?
A. 1728.
Q. That 1728 I'on is reduced in value by

$1 million, do you believe that the Town Council that votes for that ordinance has breached their fiduciary duty to you as a resident property owner on that Island?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I'm going to have to say I don't know simply because I don't know that it would be up to them.

BY MR. HOOD:

Q. Now, I'm saying hypothetically they pass an ordinance, your property just went down because of that ordinance $1 million. Now, if that happened, and assume it did, have they breached to you and your husband, and whoever else lives with y'all, their fiduciary duty --

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. -- to protect you as a resident of their Island where they're elected?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. It's a pretty easy question.

MR. SHAHID: Object to the testimony.

THE WITNESS: Would I object to that?

BY MR. HOOD:

Q. Yes.

A. I don't know. Probably. I don't know. I don't know. I don't know. I don't know.

Q. You just throw away a million dollars?

A. I don't know.

Q. You don't know whether --

A. I would probably try to elect someone else the next time. You know.

Q. Well, you see, that's exactly what this lawsuit's about. We have two families involved in the case but there are actually 81 families involved in the issue. Does that help you recognize what this is all about and why we really care about this case?

MR. SHAHID: Object to the testimony. Object to the form of the question.

BY MR. HOOD:

Q. So let's go to us, 81 front beach property owners. Do you believe the Town Council, whether we live there 24/7 or not, has a fiduciary duty to protect the value of our property on the front beach?

MR. SHAHID: Object to the form of the question.

THE WITNESS: The majority of Sullivan's Islanders benefit, in my point of view, from having protected land on the island in which they live.

BY MR. HOOD:

Q. That's not what I asked you.

Does the Town Council -- I'm not talking about accreted land. Does Town Council have a fiduciary duty to the 81 property owners of oceanfront property on Sullivan's Island? Yes or no?

MR. SHAHID: Object to the form.

BY MR. HOOD:

Q. Do they have a duty to them, a fiduciary duty in your opinion?

THE WITNESS: Define fiduciary.

BY MR. HOOD:

Q. Okay. It's no different than you are elected and from the community that elects you, you have an obligation to the people that elect you to do what's right and reasonable and appropriate. The diminution of one of those people's property value in my view would not be appropriate and would be a

violation of that duty.

A. I don't know -- I don't of --

MR. SHAHID: Object to the testimony and object to the form of the question. Go ahead.

THE WITNESS: I don't know of Town Council's involvement with property value. I don't know how to answer that question. Town properties involvement with property value, I don't know.

BY MR. HOOD:

Q. I didn't ask you about their property. Or their values. Or their involvement. That's the assessor's job.

I'm asking about their duty as elected public officials to conduct themselves reasonably and appropriately as fiduciaries towards the people, whether they live there 24/7 or not, and to preserve and protect what they bought and own, their property, and the value of it. Is there anything wrong with that you disagree with?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I'm just going to have to say once again that I don't know -- I mean, they're not responsible for the fall of the economy.

BY MR. HOOD:

Q. I'm not asking you about the economy. I'm asking you about their duty to help preserve what people own and the value of it in their community.

MR. SHAHID: Objection.

THE WITNESS: I don't know what their duty is regarding that.

BY MR. HOOD:

Q. If someone did something that took a million dollars away from you or your family, would you react to that or would you just let it happen to you?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. Just go ahead and take it, I don't need it? Or would you say to your husband, let's hire a lawyer and do something about it?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. Because that's what we're dealing with here.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. All for trees.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. How long did it take you to get to Capers when you went to Capers to look at a maritime forest? 20 minutes? 30 minutes? And you could have gone south and could have gone to Botany and seen a maritime forest there. Have you ever been to that one?

A. Botany Island?

Q. Yeah.

A. No.

Q. Well, Botany Island is one. Huntington Island. Botany Plantation.

A. Huntington, yes, yes. Huntington, yes.

Q. Well, why do we need one of those things on Sullivan's Island? We've never had one in history.

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. Taking us back to the revolution, we haven't had one.

MR. SHAHID: Object to the testimony.

THE WITNESS: It's Sullivan's Island's greatest asset in my opinion.

BY MR. HOOD:

Q. I see. So then to obtain that asset, is it reasonable and appropriate for a person elected to public office to cause a person's property to go down in value a million dollars?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. To obtain that, in your view?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Is it what?

BY MR. HOOD:

Q. Reasonable and appropriate. So we will have this valuable asset, this beautiful maritime forest, is it worth the people adjacent to it allowing them to lose a million dollars?

MR. SHAHID: Object to the form of the question.

THE WITNESS: I don't know. I'm involved in the health and protection of the treasure of the protected land out there. And I feel that it's an asset to the majority of Sullivan's Island's residents. I feel that it's a treasure.

BY MR. HOOD:

Q. And the only people you can tell me who are in this majority are these nine people?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Those are the members of our steering committee.

BY MR. HOOD:

Q. But you can't give me a list of anybody else that agrees with you?

A. Those are the only members I have a list of.

Q. Okay. You've seen my list of who agree with me. What is it, 300 something people?

MR. SHAHID: Object to the testimony.

BY MR. HOOD:

Q. You've seen that list?

A. I've seen your list.

Q. Yeah. Do you know any of those people?

A. Yes.

Q. You talk to them about this?

A. Yes. Not really, but --

Q. Have they told you why they're involved?

A. No.

Q. That they care about the value of what they own and they don't want to lose it?
A. They have not spoken with me like that.
Q. Did your husband tell you I talked to him when this whole thing started and I said, why would you want to take away my ocean view. We're friends. I've represented you. Why would you want to do that.
MR. SHAHID: Object to the testimony.
BY MR. HOOD:
Q. He never answered me, by the way.
MR. SHAHID: Object to the testimony. I'm going to move this deposition to stop if you continue to testify, Mr. Hood.
MR. HOOD: Okay.
MR. SHAHID: Okay?
THE WITNESS: Those that support us, we like to think are the majority of Sullivan's Island's residents.
BY MR. HOOD:
Q. I'd love to see a list. It seems to me like you'd be proud of it if you got one. I'm proud of mine.
MR. SHAHID: Object to the testimony.
BY MR. HOOD:

Q. Do you have a list of your supporters?
A. The list that we have -- the only list of members that we have are there.
Q. Okay. So I can go to Town Council and I can stand up and say, this is who's on this Sullivan's Islanders Group and then I can hold up another list of people that endorse this lawsuit --
A. No, those are the steering committee members.
Q. -- and there's going to be a lot of pages.
A. Those are the steering committee members of Sullivan's Island.
Q. Where's the backup to all the people that this represents?
A. We like to think it's the majority of Sullivan's Island's residents and the number will be -- answer will be in the ballot box.
Q. Okay. So by saying it's the majority, you're saying you'd like that but you're not saying that's true?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. Am I right?

A. I don't know that but I would like to think that it's true?
Q. Yes.
A. Well, the majority of Sullivan's Island's residents do not live on -- you know, are not concerned with the things -- the things that I think is that the majority of Sullivan's Island's residents would certainly be in support. Absolutely, is what I think.
Q. Of support of decreasing the property values on the island.
MR. SHAHID: Object to the form.
BY MR. HOOD:
Q. The majority of the people would be in favor of that?
A. I'm not saying that.
Q. Well, did you read Tommy Hartnett's letter of December the 11th, 2009?
A. No.
Q. So do you or don't you agree with his assessment, $1 million reduction of property with trees instead of ocean view?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I know that that's what

he said.
BY MR. HOOD:
Q. Do you agree with it?
A. I don't know that I agree with that. I don't know.
Q. Do you have any real estate training?
A. No.
Q. Have you asked an MAI, a real estate appraiser, to evaluate what Mr. Hartnett has said to question it?
A. I have not.
Q. Do you know how many properties have been reassessed and are in the process of being reassessed on Sullivan's Island because of the loss of an ocean view?
A. I do not know.
Q. Do you believe that the money that goes to the Town to operate from real estate taxes should be a consideration in how the accreted land is treated?
A. Say again.
Q. Do you believe that the money that goes to the Town to operate for property taxes should be a consideration in how the Town addresses the accreted land?

MR. SHAHID: Object to the form of the question.

THE WITNESS: The money that the Town receives in what regard?

BY MR. HOOD:

Q. I believe most of the operation of the Town's budget is from property taxes but whatever it is, I'm asking you whether or not because some money is derived to the Town to operate from property taxes, should the value of the property as it's affected in how this accreted is handled be a factor the Town Council considers?

A. I don't know. I don't think my brain is functioning anymore.

Q. Okay. Do you agree that an unobstructed view of the ocean and breezes is desirable to someone that owns a front beach property?

A. Would be desirable?

Q. Yes.

A. We don't believe in an all-around view is required in -- through protected land. It should -- what they desire is up to them.

Q. Continue with what you believe. No all-around view? What kind of view?

A. 365 degree view.

Q. I'm sorry?

A. All-around view, 365 degree view.

Q. Okay. They shouldn't have that?

A. We don't believe in that.

Q. Okay. What do you believe in?

A. Again, proper management of the land in a healthy way. We have never said ever no pruning at all.

I think that the company the Town hired is planning right now view corridors here and there, so we'll have to wait and see what they come up with.

Q. What does your group think of their proposal to put a sand dune the length of the Island east to west?

A. Disagree.

Q. Disagree with it? Yet they said that was the greatest way and the best way to protect the Island from a hurricane but you disagree with it?

A. Disagree with it.

Q. Did you read the opinion from General Robb, two-star General Robb, Nat Robb, who said I was in charge of eight hurricanes for the National Guard in North Carolina and trees do absolutely

nothing to help in a hurricane and, in fact, they become missiles and are a danger in a hurricane? Did you read that letter?

A. No, I did not.

Q. Do you know Mr. Robb, General Robb?

A. No.

Q. Do you consider your house to be ocean access?

A. What does that mean, accessible to the ocean?

Q. Yeah, it's a term that the assessor's office uses. They consider some properties oceanfront, some ocean view, some ocean access. I'm just asking if you consider yours ocean access?

MR. SHAHID: Object to the form of the question.

THE WITNESS: Ocean view, ocean what and ocean access?

BY MR. HOOD:

Q. Uh-huh. Oceanfront, ocean view, ocean access.

A. Access.

Q. Okay. Are y'all ocean access?

A. I would think so.

Q. Have you seen the aerial photographs

and site photographs that the deed required the Town to take and preserve in 1991 of the accreted land?

A. Probably. It's been a while.

Q. Okay. Where did you see them?

A. I don't know if it was '91 but I've looked at many aerial photographs. I don't know if it was '91.

Q. Well, I've subpoenaed what the Town has and I've yet to see any of '91 myself. I'm just wondering if you've seen any?

A. I can't tell you the years of the ones that I've seen but through the years, I've seen many. I don't know exactly in '91.

Q. The deed required --

A. Seems like at Hurricane Hugo there was some aerial photographs.

Q. Yeah, that was before.

A. Maybe not official by the Government but --

Q. Right.

A. -- aerial photographs.

Q. That was in '89 and Hugo took all trees that were there away, correct or not?

A. It was pretty devastating.

Q. It was.

A. I don't know about taking all trees away. I feel that the large trees stood as a barrier and a protection, absolutely.

Q. But you haven't read General Robb's letter?

A. I have not read Robb's letter.

Q. So, again, back to what I'm after.

I've been looking for this since day one. Photographs that the deed requires Open Land Trust to do and the Town to do. '91 photographs and aerial photographs, that's after Hugo; '89 is Hugo. Have you seen any at the Town office, at Open Land Trust, at your house, on a computer or anywhere?

A. I haven't seen any -- the only thing I've seen is like when airplanes go over and take pictures at the time.

Q. Aerial photographs. Okay. You've seen some of those.

A. And that was like in the newspaper and whatnot but not official through Town Council or anything like that. Through Town Hall.

Q. For example, in front of Nicky Bluestein's house, after Hugo, there were no trees. Do you know that or don't you, one way or the other? That's what we put in our complaint and that's the

way it was.

A. I know that's what Nicky said.

Q. Right. And that's the way it was. Do you know that from walking out there and looking after Hugo what it did?

A. What it did?

Q. Yeah. That whole block had nothing but sand there. It had 8 feet of water come through there.

MR. SHAHID: Object to testimony.

BY MR. HOOD:

Q. Did you have 8 feet of water at your house?

A. We're up on a dune.

Q. You didn't have any rising water?

A. Not in the house.

Q. Well, you were lucky.

A. I know.

Q. Is there a dune there? Did y'all actually build on a sand dune, elevated sand dune?

A. Yes, we have relatively high property. It's like 11 feet above.

Q. So you were right above the surge, I guess?

A. Uh-huh.

Q. Were your neighbors as lucky in front of you -- not the other houses like yours but the ones in front of you or did they have rising water?

A. I think right in front was fine. I don't know about the Sand Dunes Club. I know that their yard was flooded. I don't know about inside of the house -- I mean, inside of the structure.

Q. Are you aware that the deed with the Open Land Trust says that it can be -- the deed restrictions can be enforced by the Town or any property owner within the Town? Are you aware of that language?

A. Say again.

Q. The deed restrictions with the Open Land Trust --

A. Uh-huh.

Q. -- specifically the restrictions say they can be enforced by anyone that lives on Sullivan's Island or votes on Sullivan's Island. Did you know that?

A. Can be enforced by the deed restrictions. What does enforced mean?

Q. Well, in our view, the deed allows scenic enhancement, ocean views and breezes. And the ordinance that's in effect now takes that away

because you can't cut all vegetation.

Therefore, the deed is being violated. That's what this lawsuit is about. So we're asking the ordinance that does that to be voided, to go back to the ordinance that was in effect when the deed was signed. We get our views back and the case is over. That's what this is all about.

Okay. I'm asking you if you've read the deed, if you're aware of that that as property owners, Nicky Bluestein has a right to bring this lawsuit to say we want the deed enforced?

MR. SHAHID: Object to the form of the question.

BY MR. HOOD:

Q. Do you know that? That's all I'm asking. Have you read it?

A. I don't think that an individual has a right to dictate what happens in protected land.

Q. And that apply to you too and your nine friends?

A. Well --

Q. That might be different.

A. What is in place now is that our Town Government decides what is -- an individual cannot go out in protected land and plant or cut down or --

it's out of their hands. It's against the law.
Q. Okay. Have you read the restrictive covenants of the deed involved in this land?
A. Yes, I have.
Q. Are you aware that it gives people who live and own real estate and vote on Sullivan's Island, either one, the right to enforce the deed by saying these are the requirements, you're not following the requirements?
A. In other words, if they say -- if they see trees out there that have been cut down, which is also in the -- that they are allowed to report that or is that what you're saying?
Q. No, I'm not saying that.
A. If they see mosquitoes, are they allowed to report that? Is that what -- if they see --
Q. Just purely ask you: Do you agree that I'm correct that the deed says, quote, it may be enforced by the Town, any property owner within the Town or by any voter registered within the town, yes or no?
A. I'm aware that it says that the Town Council is responsible for making any sort of decisions regarding control -- mosquito control out

there, public safety, views, what is to be trimmed, that sort of thing. I'm aware of that in the deed restriction.
Q. Okay. Are you aware that the deed requires to be modified or repealed, a vote of 75 percent of the registered voters of the island or 100 percent of Town Council?
A. Yes, I'm aware of that.
Q. Has that been done? Has there been a referendum?
A. It's never been done.
Q. Do you know what study, if any, were undertaken by Town Council to pass the ordinance that was passed dealing with the accreted land in 2005?
A. If any study was done?
Q. Right.
A. To do what?
Q. To pass an ordinance dealing with the accredit land in 2005.
A. What ordinance?
Q. There's an ordinance in place, that's currently in place that allows property owners to cut certain vegetation to 5 feet. Do you know if in the passing of that ordinance if the Town undertook

any studies or undertook any investigation?
A. As to why they limited the --
Q. To allow whatever the ordinance allows?
A. If they did any studies.
Q. Yes.
A. Not to my knowledge.
Q. To your knowledge, has any criminal activity occurred in the accreted land?
MR. SHAHID: Object to the form of the question.
THE WITNESS: Well, everybody knows that -- about the girl at the beginning of the Station 16 path that was accosted and stopped in the process.
BY MR. HOOD:
Q. Any others besides that one?
A. In the accreted land?
Q. Yes.
A. No. I know of one other where actually this criminal was hiding in a person's property and the girl ran into the accreted land for protection. There was another incident like that.
Q. Did he run after her, assault her?
A. No, that's all I read.
Q. And she got away hopefully?

How about fires? Do you know about any fires out there in the accreted land?
A. There was one in the -- around Station 24 several years ago and it was within the brush, shrub area and it stopped when it got to the larger tree.
Q. Do you know anyone that's bought a house on Sullivan's Island because of the attractiveness of the trees and vegetation?
A. Yes, I've heard of a -- of people that -- right by Station 16, two from the path that when they saw it, they loved it and they were appreciators of land and nature and certainly high on their list of why they bought that property.
Q. They currently own it?
A. Uh-huh.
Q. What are their names?
A. I don't know.
Q. They're next door to the Fortieres?
A. No. 16.
Q. Okay. They got trees right up to their porch, their front door on the ocean side?
A. Not to their front door. At the end of their property.
Q. And they like that?

A. They like that.
Q. But you don't know their names. How long ago did they buy?
A. I'd give it five.
Q. Five years.
A. I don't know their names -- I used to know but I forgot their names.
Q. Have you ever been a member of the Lowcountry Open Land Trust?
A. No.
Q. So if their objective is dedication to preservation of scenic vistas and open space to preserve and conserve natural areas, would you know that?
A. Yes.
Q. Do you agree with that?
A. That's what they do?
Q. Do you agree with that, what they do?
A. Read again. Preserve open space --
Q. Preservation of scenic vistas and open space.
A. Preservation, yes.
Q. Do you own any property other than on Sullivan's Island?
A. We are coowners -- well, more than --

one of three owners of a piece of property at Lake Murray, Columbia.
Q. Is it on the water?
A. Uh-huh.
Q. The answer is yes?
A. Yes.
Q. And do you have a view of Lake Murray?
A. Yes.
Q. Is that a house?
A. A house, yes.
Q. What is the address?
A. 160 Driftwood.
Q. Is it on the north side of the lake or the --
A. It's the Lexington.
Q. Lexington side. How far from the dam?
A. I don't know how far from the dam in miles.
Q. Have you purchased any property and dedicated it to some chartable organization as a maritime forest?
A. No.
Q. Have any of these nine people done that?
A. I don't know.

Q. Have you ever given any land to the Town of Sullivan's Island?
A. No.
Q. Have any of these nine folks?
A. I don't know.
Q. Do you have any videos after Hugo or still photographs or aerial photographs of what the accreted land looked like, would be in '89?
A. The accreted land, no.
Q. How about any of these nine people, have they shown you any such photos, aerials, videos or still photos accreted land?
A. Of the accreted land, no.
Q. Were you involved in taking any site photos when the deed was done?
A. When Hugo went through?
Q. No. The deed was done a year after Hugo, okay?
A. Oh. Yes.
Q. However many months it was.
A. Two.
Q. The deed is done in February '91. Hugo is fall of '89. The deed required photos. Did you get involved in that process to help the Town take site photos?

A. No, no, no.
Q. Were you aware of anyone doing that and who did it?
A. I was not aware.
Q. So who the photographers were that actually took the pictures, you don't know?
A. No. I would imagine newspaper. I don't know.
Q. Okay. Who is this referring to themselves as their usual Nazi self.
A. I know this one. That is Mary Ellen Rogers.
Q. Is she on Town --
A. She was my turtle -- no, she's not on Town Council. She was my turtle lady mentor.
Q. Do you know how many turtle nests on the front beach last summer?
A. You know, I did read that. It's blown out of my mind, though, the number.
Q. Do you know how many of them were along the properties that have houses, oceanfront houses?
A. No, I used to be a turtle person involved with that and patrolling the beach but I moved on to other things and haven't kept up with that.

Q. Okay. Who's the head turtle person now?
A. Mary Pringle.
Q. Mary Pringle?
A. Uh-huh.
Q. Does she live on the Island?
A. Uh-huh.
Q. Have y'all taken on the cause of longliners killing turtles yet?
A. Y'all? You mean them?
Q. Yeah. Oh, you're not one of them anymore?
A. No.
Q. Okay. And on the West Coast, they were successful in putting longliners out of business, the whole West Coast, the turtle people were. Would be great if they could do that here.
THE WITNESS: Well, I've got to use the facilities. May I be excused?
MR. HOOD: Yes, ma'am. Anytime you need to. No problem. Go right ahead.
(Off-the-record conference.)
BY MR. HOOD:
Q. We're seeing what was brought today, an e-mail to Madeleine McGee and your husband is asking

her for 30 minutes to talk politics. Do you know what they were talking about. The e-mail was sent on --
MR. SHAHID: Can she see that?
MR. HOOD: Yeah, sure.
BY MR. HOOD:
Q. -- September the 30th of last -- 2010.
A. He did go over there. Yeah, he did go over there to speak with Madeleine. I'm sure that it was about getting her views on conservation, et cetera, et cetera. I wasn't present with him to go over there.
Q. Did he report to you what happened, what she said? Was she in favor of cutting or not?
A. You know, regarding any Council member, it's hard to pin them down about anything. And no Council member has been completely on our side, you might say, you know, to our complete satisfaction. None of them.
And Madeleine is -- was hard to -- she would talk about this and that and this and that and this and that. And then Norman came home and it's like, I'm not sure what we talked about, so...
Q. Okay. There's one more I want to ask you about that's on this card y'all gave us. This

one has red lining changes to an Island Eye newspaper article, do you regularly do that?
A. Red lining?
Q. Yeah.
A. Oh.
Q. You sent the article before it's published and you're making corrections and editorial changes to it. Do you regularly do that?
A. I don't know if we regularly do that but maybe it's just like a thing that's sent back for us to correct like group is wrong. We like to be referred to as the Sullivan's Islanders Group because the Sullivan's Islanders could refer to all citizens of Sullivan's Island, things like that.
I don't know how often that happens so if that was your question.
Q. Yeah. I'm curious of how often you review and editorise [sic] Island Eye News articles dealing with accreted land.
A. Articles that they put out, I don't think that we're privy to alter what they put out as far as their own articles go. But we -- it looks like we submitted this to them and we're correcting it.
Q. Okay. How about The Moultrie News? Do

you submit articles to them or publications or --
A. I'm sure we have.
Q. -- or letters or whatever?
A. I'm sure we have.
Q. And have they published them?
A. I wish I could cite you some but I don't recall.
Q. Okay. Let's look at this e-mail where Pat O'Neil is asking your husband to call him and there he gives his telephone number and his cell number. What's that about?
A. Let's see, what date. 2008. That's too -- too nebulous for me to tell what was sent back and forth.
Q. Okay. Do you and/or your husband regularly talk and communicate with Pat O'Neil about the accreted land?
A. Very irregularly.
Q. I'm sorry?
A. Very irregularly.
Q. Irregularly. Yet he's giving y'all his home number which I think is unlisted and a cell number. Do y'all call those numbers often?
A. Pat's number is in the phone book.
Q. It is?

A. Yeah. No, we don't call him very much.
Q. Let me ask you about this e-mail while we're getting a phone book.
I want to know who the hired guns are in that e-mail.
You're right, it is in the phone book.
MR. HAIR: Just to say for the record that I'm impressed Mr. Hood can read that phone book without any glasses to assist him and I mean that because I can't.
MR. HOOD: It wasn't in the phone book last year.
BY MR. HOOD:
Q. So who are the hired guns?
MR. SHAHID: Object to the form of the question.
THE WITNESS: I don't know what I was talking about hired guns. I don't know what I was talking about.
But this was -- all of these people coming to Town Council meeting for these -- for the purposes of fire, real estate value, DHEC for the health of the citizens, Will Haney.
BY MR. HOOD:
Q. Those are the hired guns?

A. Maybe. I don't really know what I was referring to, hired guns. I mean, it doesn't seem like any of these were like hired guns. I don't know.
Q. They're not. All of them are public servants, aren't they?
A. Uh-huh.
Q. The ones you're thinking about?
A. Uh-huh.
Q. Who are the hired guns?
A. I don't know. What about the hired guns. I don't know.
Q. Let me see the reference.
A. I do remember the occasion.
Q. Okay. It's from Benke to Perkis.
A. Uh-huh.
Q. And somehow you get a copy of it.
A. Which I don't have. I wish I did. I could tell you maybe what I meant.
Q. I have heard Julia Khoury was worried about the hired guns brought in by the front beach owners. And you don't know who that is?
A. And I guess he's -- that's a quote, but I don't know.
Q. Have you ever been on the porch of a

front beach Sullivan's Island house?
A. Yes.
Q. Which house or houses?
A. Many.
Q. And did you enjoy the view from the porch of the house or houses you've been on, been to?
A. Yes.
Q. Did you know Pat O'Neil has never been on a front beach porch on Sullivan's Island?
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. Did you know that?
A. I didn't know that.
Q. You find that surprising for him to be the leader of Town Council's tree committee?
A. He's never been on a front beach porch?
Q. That's what he told us in his deposition.
MR. SHAHID: Object to the form of the question.
BY MR. HOOD:
Q. He's lived on the Island 11 years and he's never been on a front beach porch.

A. Do I find it surprising?
Q. Yes.
A. A little.
Q. Yeah, I do too.
A. It seems like he knows the Island.
Q. The houses you've been to, would the enjoyment of living there be significantly altered if the view of the water, whatever view they have in the harbor, ships coming in and out, the buoys at night lighted up, the moon coming out of the ocean, would they be significantly impacted if all of a sudden there was a forest there instead of the water?
A. It might be just as wonderful to walk through the forest and onto the beach to watch the moonrise. You've got a forest and a beach. That's my -- my point of view.
Q. And so if you were one of those front beach property owners that wanted to have that point of view currently, you could opt, like my neighbor on the north side, Tom McCutcheon, and not cut and let it grow. You have that --
A. Yes, you have --
Q. -- the property owners have that option now, don't they?

A. Yes.
Q. Do you know why he hadn't cut?
MR. SHAHID: Object to the form of the question.
THE WITNESS: No, I don't know why he chose not to cut.
BY MR. HOOD:
Q. Okay. This is about the mess on the beach and something -- what's that all about? Is that when the college kids left a bunch of beer cans on the beach or something?
A. I think we've already gone over this letter.
Q. No, we hadn't, not that language that's highlighted. What's that about, the reference to Nicky?
A. This was about the tree cutting in that area, the illegal tree cutting in that area of not only Nicky's property but other properties as well, the 30 trees that were illegally cut down.
Q. Okay. We don't know what you're talking about there. There hadn't been any illegal cutting in front of Nicky's house that we know of. What are you talking about?
A. In the accreted land in front -- in the

general area in front of Canard (phonetic), Bluestein, Ildriton (phonetic), in that area.
Q. Uh-huh.
A. There was illegal cutting of a good 30 trees and that is what this letter refers to.
Q. Okay. And did you go out and see it?
A. Yes.
Q. Did you count the trees?
A. They were already counted. I looked.
Q. Did you take any pictures?
A. Probably.
Q. Okay. And how long ago was that?
A. This was 2008. And during that Town Council meeting as Nicky said, I will take a lie detector test to let you know that I didn't -- I was not the one to do this. And the mayor looked at him and said, Nicky, I think that's unnecessary. That's what that means.
Q. Because Nicky wasn't physically out there at all. Some company had been hired and went out there and cut whatever they cut?
A. I don't know company.
Q. Did they get fined for doing that?
A. The residents there to my knowledge lost their bond that they put up. The company that

was hired by Council that cut the myrtles and maybe inadvertently cut other trees while they were cutting that land was fined.
Q. Okay. All right. So that was two years ago?
A. But these trees, the company did not cut down. That was a -- the paper called it the mystery lumberjack.
Q. Okay. Thank you.
MR. HOOD: All right. Those are all the questions I have. Thank you very much. Have a nice afternoon.
(The deposition was concluded at 12:50 p.m.)

SIGNATURE OF DEPONENT

DEPONENT: JULIA M. KHOURY
DEPOSITION DATE: January 25, 2011
REPORTER: SKYLER HARE BRITT
CASE CAPTION: NATHAN BLUESTEIN, et al vs. TOWN OF SULLIVAN'S ISLAND et al

(Please return both Signature of Deponent pages)

I, the undersigned, JULIA M. KHOURY, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: January 25, 2011
REPORTER: SKYLER HARE BRITT
CASE CAPTION: NATHAN BLUESTEIN, et al vs. TOWN OF SULLIVAN'S ISLAND et al

PAGE	LINE	CHANGE	REASON

JULIA M. KHOURY Date

I, Skyler Hare Britt, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Skyler Hare Britt
My Commission expires
April 20, 2019

CERTIFICATE OF REPORTER

I, Skyler Hare Britt, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of January, 2011 at Charleston, Charleston County, South Carolina.

Skyler Hare Britt
My Commission expires
April 20, 2019

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STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

NATHAN BLUESTEIN, ETTALEAH BLUESTEIN, M.D., THEODORE ALBENESIUS, III, and KAREN ALBENESIUS,

Plaintiffs,

ORIGINAL

vs.

CASE NO. 10-CP-10-5449

TOWN OF SULLIVAN'S ISLAND and SULLIVAN'S ISLAND TOWN COUNCIL,

Defendants.

VIDEOTAPED DEPOSITION OF: PATRICK M. O'NEIL, Ph.D.

DATE: December 7, 2010

TIME: 10:04 AM

LOCATION: Law Offices of Hood Law Firm
172 Meeting Street
Charleston, SC

RECEIVED
FEB 28 2014
Charleston County
Clerk of Court

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR. & ASSOCIATES
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Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376
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(803) 731-5224	(864) 234-7030	(704) 573-3919

VIDEOTAPE

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
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Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

APPEARANCES OF COUNSEL:
ATTORNEYS FOR THE PLAINTIFFS
NATHAN BLUESTEIN, ETTALEAH BLUESTEIN, M.D., THEODORE ALBENESIUS, III, And KAREN ALBENESIUS:

HOOD LAW FIRM
BY: JAMES B. HOOD
ROBERT H. HOOD, SR.
A. WALKER BARNES
172 Meeting Street
Charleston, SC 29401
(843) 577-4435
james.hood@hoodlaw.com
bobbyhood@hoodlaw.com
walker.barnes@hoodlaw.com

and

MCCUTCHEN BLANTON, LLP
BY: THOMAS E. MCCUTCHEN
1414 Lady Street
Columbia, SC 29201
(803) 255-0997
jstevenson@mbhclaw.com

ATTORNEYS FOR THE DEFENDANTS
TOWN OF SULLIVAN'S ISLAND and SULLIVAN'S ISLAND TOWN COUNCIL:

LAW OFFICES OF J. BRADY HAIR
BY: J. BRADY HAIR
DERK VAN RAALTE
2500 City Hall Lane
North Charleston, SC 29406
(843) 572-8700
brady@bradyhair.com
derk@bradyhair.com

and

DODDS & HENNESSY
BY: LAWRENCE A. DODDS, JR.
973 Houston Northcutt Boulevard
Suite 101
Mount Pleasant, SC 29464
(843) 881-1022
ldodds@doddsandhennessy.com

ALSO PRESENT:
EttaLeah Bluestein, M.D.
Nathan Bulestein

(INDEX AT REAR OF TRANSCRIPT)

THE VIDEOGRAPHER: We are now on the record. Today's date is December 7, 2010. The time is approximately 10:04 a.m. This is the videotape deposition of Patrick M. O'Neil, Ph.D., taken by counsel for the plaintiffs.

This deposition is taken in the matter of Nathan Bluestein, EttaLeah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius versus Town of Sullivan's Island and Sullivan Island's Town Council; the State of South Carolina, County of Charleston, in the Court of Common Pleas, Ninth Judicial Circuit, Civil Action Number 10-CP-10-5449.

Counsel, please identify yourselves for the record.

MR. JAMES HOOD: Jamie Hood for the plaintiffs.

MR. ROBERT HOOD: Bobby Hood for the plaintiffs.

MR. MCCUTCHEN: Thomas E. McCutchen for the plaintiffs.

MR. DODDS: Lawrence Dodds for the Town of Sullivan's Island.

MR. VAN RAALTE: Derk Van Raalte for the Town of Sullivan's Island.

MR. HAIR: And Brady Hair for the town of Sullivan's Island.

MR. ROBERT HOOD: And Walker Barnes is with my office.

THE VIDEOGRAPHER: And will the court reporter please swear in the witness.

PATRICK M. O'NEIL, Ph.D.,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. JAMES HOOD:

Q. Would you please state your full name, sir.

A. Patrick Mahlen O'Neil.

Q. Do you go by doctor or mister?

A. Mister is fine.

Q. All right. Mr. O'Neil, my name is Jamie Hood. I represent the plaintiffs in this lawsuit. Do you understand that you are here today to give a deposition?

A. I do.

Q. Have you given a deposition before?

A. I have not.

Q. All right. Just so you know, the point of this is so the lawyers can ask you questions and we can learn your answers to those questions.

During the course of the deposition, I would ask you to make verbal responses for the court reporter's benefit so she can transcribe everything that's said here between the lawyers as well as you.

During the course of the deposition, if you have any questions about the question posed to you, ask the lawyer asking the question to clarify it and he will do so. Fair enough?

A. Fair enough.

Q. If you don't understand a question, just let us know and we'll do our best to make sure that we're on the same page.

A. Okay.

Q. If you need a break for any reason, let us know and we'll accommodate you so that you are comfortable and make this as relatively as smooth as possible.

What is your current position, Mr. O'Neil?

A. Meaning my employment?

Q. Yeah.

A. I'm a professor at MUSC. I'm a clinical psychologist.

Q. All right. And you also have a -- hold

a public position?

A. I'm a member of the Town Council, Town of Sullivan's Island.

Q. And how long have you served?

A. Since 2001.

Q. Okay. Can you tell us what, if anything, you have done to evaluate the impact of -- on real estate values that the development of maritime forest and accreted land would have?

A. We have been focusing on the resource itself, rather than on the impact on property values at this time.

Q. Is there any plan to conduct any such evaluation of the impact on the property values?

A. We're in the middle of a process to determine the best way to manage that resource, and it's possible that that could be part of the later elements of that process.

Q. So we're clear, at this juncture, the potential economic impact on real estate values has not been contemplated. Is that fair to say?

A. It's been discussed when it's been raised by various people, but it's not part of the planning process. We retained consultants to help us evaluate best management practices from an

environmental and conservation point of view to manage that resource.

Q. Who would you hire to evaluate the real estate -- potential real estate value and the impact on real estate values in the development of an accreted land management plan?

A. I haven't thought about that to this point. I don't know that I could answer that. It would be a decision by Council -- by Town Council in collaboration with whatever experts we needed to contact.

Q. So --

MR. MCCUTCHEN: Don't let your voice drop way down here.

THE WITNESS: Oh, sorry. Okay.

MR. MCCUTCHEN: Thank you.

THE WITNESS: I have got the same problem.

BY MR. JAMES HOOD:

Q. Can you tell me what -- what the term "ocean front" means, sir?

A. Ocean -- I don't know that I could define it legally. Ocean front, to me, means somebody who is on the front of whatever section which is closest to the ocean. Whether or not it

means there is anything between you and the ocean, I can't say.

Q. What about ocean view?

A. Ocean view, to me, would mean the ability to view an ocean from some vantage point. But again, I don't know what the legal definition of that would be.

Q. Okay. What about ocean access?

A. Ocean access would mean ability to get to the ocean.

Q. In your role as a member of Town Council, how does the Town Council itself, as a governing body, operate?

A. Could you give me a little more specifics on that?

Q. Sure. If the Town Council wants to -- to put into action some process, how does it go about putting that into action?

A. We deliberate about what we're trying to accomplish and the best ways to do that; to incorporate public input; to incorporate expert knowledge, when that is appropriate; and to incorporate a lot of deliberation by Council, taking all of those things into account.

Q. Does the -- do individual Town Council

members have the ability to make decisions on their own? Or does the body act as one?

A. We have what's called a weak mayor/strong council form of government. So the Council as a whole has to make significant decisions.

Q. All right. And as far as parliamentary procedures, do y'all follow Robert's Rules of Orders?

A. I think we try to.

Q. Is it necessary to have board action in order -- or Council action, formal Council action, that is, in order for the Town Council to make an affirmative act?

A. It would depend on the type of act that you're talking about. There are some things where requests for the use of the park for a wedding or sometimes for a birthday party are brought to us; and we more or less informally, collectively discuss it and make a decision. If we are doing anything which would represent changes in the ordinances, we have to go through a much more formal legal process, obviously.

Q. What about for the expenditure of Town funds? Does that require formal board action?

A. We've got policies and procedures set up to determine what type of expenditures can be made and what types of decisions are required and authorization. I can't tell you what those specifics are.

Q. Does the Town Council have any staff dedicated to it?

A. Well, we utilize the services of all of the staff of the Town, if that's what you mean. There's a Town clerk. There's a Town administrator.

Q. Okay. And --

A. Others.

Q. And do those -- those individuals, do they work for Town Council as well as for the mayor?

A. They work for the Town.

Q. Who was the -- I have seen Andy Benke's name in a lot of correspondence as the Town administrator. Is that right?

A. Correct.

Q. Are there other individuals like Mr. Benke who have an administrative role that the Council has access to?

A. Well, we utilize a number of the people

in the Town Hall office staff. Yes.

Q. All right. And -- and all those people are, you know, accessible to all of the Council members as needed?

A. What we recommend is that anybody who requires certain services beyond the most minor funnel those requests through the Town administrator, who can then delegate them.

Q. You mentioned the clerk. Who's the clerk? The current clerk.

A. The Town clerk is Ellen McQueeney -- Miller? McQueeney got married a week or two ago.

Q. What's her --

A. Is Miller the last name? We don't know yet.

Q. Okay. No problem.

A. She's been McQueeney for a long time.

Q. What is your understanding of the authority that the Town Council has to enact ordinances that permit the development of a maritime forest in the accreted land?

A. State the question again, please.

Q. Sure. Under what authority does Town Council have to enact ordinances that permit development of a maritime forest in the accreted

land?

A. Well, I'm not a lawyer. But certainly to the extent that zoning ordinances or any other Town ordinances are involved, then Council has the right to enact ordinances. Council also represents the owner of that property; namely, the Town of Sullivan's Island.

Q. Any other authority other than zoning ordinances and the authority invested in the Town as owner of the accreted land that you believe that --

A. Well, obviously, there may be other ordinances besides the -- the zoning chapter.

Q. Are you aware of any limitations on the Town Council with regards to its authority to manage the accreted land?

A. Well, obviously restrictions in terms of what can be done with that land that result from the covenant with the Lowcountry Open Land Trust.

Q. Any other restrictions or limitations you are aware of?

A. My -- I think that we also may interact with state and federal agencies that have to do with coastal protection, natural resources, environmental issues.

Q. And is that something that the Town has done, interacted with the federal government relative to any federal regulations involving the development of an accreted land management plan?

A. I believe that we had received some reaction to the most recent draft plan that we got from the consultants from a couple of agencies outside of the Town. I know we got input from one or two state agencies. I can't recall whether we have heard anything from any federal agencies.

Q. And prior to developing the plan, the current draft of the plan that is in circulation, did the Town go out and solicit the input or advice or counsel of any federal agency?

A. Well, what we have done so far is retain these -- this team of consultants to help us look at the various management options and to give us the pros and cons of the options from the various standpoints relevant to management of that resource. Whether we have initiated any contact with the Town itself directly with any federal agencies, I don't know. I also don't know whether the consultants have done so or not.

Q. The same question with regards to state agencies. Are you aware of any direct contact of

the Town, either through Council or the executive office of the Town or their administrators, that reached out to state agencies regarding their input on the development of an accreted land management plan?

A. I believe that when we had our last public Town meeting, where the consultants described their management options, that representatives of a couple of state agencies, such as DNR, were notified of that meeting and invited to attend if they wished. I think the Forestry Commission also had learned about the meeting and sent a representative. I'm not sure whether they were contacted by the Town or others.

Q. Do you know if their input was sought prior to the provision of this current plan that is in place?

A. I don't know.

Q. You mentioned a team of consultants. What's the team of consultants you are referring to?

A. The team led by Coastal Science & Engineering. Tim Kana is the principal, and he has had -- he put together a team with expertise in a couple of other areas.

Q. And what specifically is their area of expertise?

A. Bart Sabine and his son are involved in forestry and the natural resources end of things, flora, fauna.

Q. Any other areas of expertise that --

A. There was somebody from Dewberry Associates, I believe. And I think their area of expertise, as I recall, was coastal processes having to do with -- I don't know if I can say storm surge, but having to do with protection -- the impact of the ocean on the land and vice versa.

Q. And is Kana overseeing -- is it Sabine?

A. Sabine.

Q. Sabine? Is Kana overseeing Sabine and Dewberry? Or are they all working together?

A. They're all working together, but he's the principal. And there may be someone else. I'm just not remembering for certain.

Q. So what it Tim Kana's area of expertise?

A. He's an engineer. I'm like -- I don't remember -- I don't know if he's a civil engineer or not. A lot of his work has been in beach nourishment/renourishment.

Q. How was Tim Kana and his group selected as the consultants for use in the development of the accreted land management plan?

A. The Town sent out an RFQ, I think. I don't think it was an RFP, I think it was an RFQ advertising the type of work that we needed done, scope of the project, the types of expertise that we were seeking. And we received a number of applications, many from similar sort of consortiums -- consortium.

We reviewed those. Council met openly and discussed the pros and cons of those applications. I think we had a process by which we evaluated them on various factors and then collectively came up with a decision to go with one group, based on the collective evaluations of all the members of Council.

Q. Have you been pleased with the work product generated by Kana's group?

A. I think it has largely given us what we asked them to provide.

Q. Okay. The fact that you say "largely" makes me think there is some portion of the product that is not what you then sought or what would you -- not what you were asking to be provided. Is

there some aspect of what they have done that you are not pleased with?

A. I can't say that I'm not pleased -- that I'm not pleased with anything in that -- in that report. It was -- we had to work with the team to help them understand what our real interest was in this project; namely, the protection and management of our resource.

Q. Okay. Could you explain to me in your own words what the -- what the goal was? What you had to focus the consultants on?

A. The different factors that are involved in properly managing that resource.

Q. Okay. And from your perspective, what do those factors consist of?

A. Well, best practices as used in similar circumstances, similar properties. Best protection for the island. Environmental value. Educational value. Just overall enhancing the value of that resource for the Town, entire Town.

Q. When you say --

A. So things such as, you know, what do you know about the wildlife, biology, botany --

Q. When you say environmental --

A. -- ecological expertise.

Q. Okay. When you say "environmental value," what does that mean?

A. The value of that property as a natural -- as a natural resource.

Q. And how is that measured?

A. How is that measured? I'm not sure that I'm capable of giving you the metric for measuring that.

Q. Well, when you are evaluating a set of circumstances like this and you're trying to determine whether certain management practices will add value to the property as a natural resource --

A. Uh-huh.

Q. -- how do you quantify whether you are adding value or subtracting value?

A. I think I would look at the impact on the health and diversity of the flora and fauna in that area.

Q. Anything else?

A. I've not really thought about the -- that from that vantage point before. That's all I can think of now.

Q. What other parameters were given to the consultants about the scope of work that the -- that the Town Council wanted them to perform in

presenting the Town Council with anything?

A. I don't recall the specifics, but it's laid out in the -- both in the request for qualifications and in the contract.

Q. Was there a particular member of Town Council that was appointed as the point person for interfacing with the consultants?

A. To some extent, it came under the real estate committee, which I chair. But I was not given any particular -- any special authority in dealing with them.

Q. Did you have to -- were you the -- sort of a point person then from the committee's standpoint that the -- Tim Kana or his team would come to with questions and --

A. No. They would go to Andy, to Andy Beneke.

(Reporter interruption.)

THE WITNESS: I'm sorry. Sorry.

BY MR. JAMES HOOD:

Q. Does the existence of a maritime forest interfere with the front beach owners' ocean view?

A. We've been told that it does.

Q. Have you gone out there and looked?

A. I actually walked the land in front of

Mr. McCutchen's house with him, at his invitation.
Q. And what was your personal observation?
A. Well, about the ocean view?
Q. Correct.
A. Well, my observation was that if you stood on the ground in front of his house, that you couldn't see the ocean.
Q. What about if you stood on his porch?
A. I don't remember that. I don't remember for sure.
Q. Okay. So I mean, you personally, you have personal knowledge that the existence of a maritime forest does interfere with front beach owners' access to the ocean -- or view of the ocean?
A. Well, I would say the existence of any physical barrier between your level -- the level of your eyeballs and the ocean will interfere with your view, whether it's a forest, a tree, a billboard, or a house.
Q. Sir, there's an ordinance in place that you can't have a house out there, is there not?
A. Correct.
Q. What about billboards? Are they permitted?

A. Nope.
Q. So my question has to do with the maritime forest and whether you have experienced whether a maritime forest interferes with front beach owners' ocean view. And you have told me about Mr. McCutchen's house.
A. Uh-huh.
Q. Have you seen the impact, if any, that a maritime forest has had on other homeowners' views?
A. I'm trying to remember if I have been on any oceanside porch in other houses. I can't recall that I have been.
Q. You've mentioned that you have --
A. It would depend on how -- what your elevation is at the house and the elevation of the trees.
Q. You mentioned that you had heard that there was complaints that the maritime forest interfered with ocean views when I asked you that question initially. And my question to you now is: Who did you hear those complaints from?
A. A number of residents and property owners.
Q. Did you do anything to investigate the

validity or -- or the nature of those complaints?
A. Personally?
Q. Yeah.
A. As I said, I was invited by Mr. McCutchen to walk the property, the Town property in front of his land. I've been to one or two other residents' yards to look at the situation there.
Q. When did you first move to Sullivan's Island?
A. I believe 1985.
Q. Do you have any recollection of whether there were any maritime forest on the island as of 1991?
A. I'm not sure how you would define maritime forest, but as you -- you're saying 1991?
Q. Yeah.
A. Again, depending on how you define maritime forest, which I don't think either of us has --
Q. Sure. Why don't we do that. Why don't you tell me how you define maritime forest so we're singing out of the same hymnal here.
A. Well, if -- we've been told that there's various stages of succession of growth of

land when land is accreted, that it goes through. And there's reference that's made by the experts in that field of something called a climax maritime forest, which I think is typically considered to be mature hardwoods, such as oaks, but not exclusively.
That, we have also been told, takes a long, long time to get to. So there's a lot of stages in between there. If you are talking about the growth of any sort of trees or vegetations that would be considered trees, then that's -- that's a sort of a different matter from a climax maritime forest. But to define it more generally, yes, there were. There was -- there at Station 17. I walked through stands of trees, not mature oaks, but stands of trees.
Q. In what areas on the island in '91? You mentioned Station 17.
A. You know --
Q. Do you recall having those forest --
A. I can't say that I recall where it started, where it stopped.
Q. In Station 17, is that -- that's in front of -- well, I guess that's just south of the lighthouse?

A. No. It's southwest, a few blocks.
Q. Did you compare any of the -- have you ever gone back and historically looked at the photographs that were in existence in 1991 to determine what the state of the accreted land was at that time?
A. I have seen some, but I have not looked at them from that -- with that particular question in mind.
Q. Does -- as a member of Town Council, have y'all had to engage people or, say, hire people to come in and document the status of the accreted land pursuant to your obligations and the -- the deed that the Town purchased the accreted land from the Lowcountry Land Trust?
A. I'm not sure. I believe the Land Trust surveys it in a relatively low-key way on some regular basis to verify that we're adhering to the terms of the deed restriction.
Q. Does the Town do anything on -- on its end?
A. The Town has -- retains the part-time services of a consulting -- I think he's a forester, but I -- I think that term of profession probably has meaning, clear meaning, under state

law, but -- in terms of licensing and regulation. Because I know we've retained somebody we refer to as a forester to monitor the cutting that is done under permits issued by the Town.
Q. What different parts of the island have -- have you actually lived on?
A. I've lived between Station 17 and 18.
Q. And is that the -- have you lived in one house on the island?
A. Two different houses.
Q. Same area?
A. Yeah. I lived at 17, between Atlantic and I'on, on the corner. And I live on Thompson now.
Q. What was the street address of the Station 17, Atlantic and I'on?
A. 1701 Atlantic -- 1702 Atlantic.
Q. And what is your address at the Thompson?
A. 1738.
Q. And then Thompson, that's in the Cove?
A. It's not on the -- on the Cove directly, it's on the back beach. It's called the back beach on the marsh.
Q. Does the development of a maritime

forest advance the management of drainage in accreted land?
A. I don't have expertise in that area. I couldn't tell you. As a layman, I would think that the more evaporative potential you have from vegetation, the better able the land would be to increase evaporation of -- of water.
Q. Explain to me what you mean by that.
A. Well, just that if water is not going to drain, it's got to evaporate. And so if you have got trees with more leaves, they're evaporating water. But again, that's as a layman. I don't have expertise.
Q. What would the shade generated from the leaves do to evaporation?
A. Well, if it's blocking sunlight, it might slow it down some. I don't know where the balance point is between the increase from the leaves and the decrease from the shade. I guess it just depends on how many leaves and how much shade.
Q. Have you -- is that something that has been evaluated in -- in looking at the accreted land and the management of it, how to control the drainage of it?
A. I don't know that -- how specifically

it was looked at. I think we did get information in the draft report about that. Over the years, I know there have been some issues with some property owners discharging stormwater in that area and, I think, DHEC having something to say about it.
Q. What impact does the development of a maritime forest in the accreted land have on mosquito control in the accreted land?
A. I don't -- I can't answer that.
Q. What impact does the development of a maritime forest in the accreted land have on public walkways and emergency access to the Atlantic Ocean?
A. It need not have any, so long as those accessways are maintained, as we do. We maintain emergency access pass throughout the -- across the island, including through the most mature wooded areas.
Q. Where is that, the most mature wooded areas?
A. Basically from -- by the fort, in front of the fort down to wherever you want to draw the line. But probably more mature starting at the fort and then gradually becoming less so. There's a large path, a wide path at Station 16 for

emergency vehicles. In fact, we have recently widened it.

Q. What impact, if any, does the development of a maritime forest have on beach renourishment?

A. I'm not aware that it has any. But again, that's not my area of expertise.

Q. What is your area of expertise?

A. I'm a clinical psychologist. I have acquired some avocational expertise in town government over the years, I guess. But my primary training is in psychology.

Q. You know, these are -- these questions have to do with information that -- that you have been presented with in your capacity as Town Council. And then that's fine as well.

What impact, if any, does the development of a maritime forest have on erosion control?

A. I -- the forest itself, I'm not -- I would think that it would be of benefit, but I can't speak to that directly.

Q. And is that consistent with what your consultants have reported?

A. They've focused more on the leading

edge, not so much the forest as on the leading edge where you get the primary dune and the original of the dune grasslands and such. And then moving backward from that.

Q. Do you know if the consultants --

A. If you have a maritime forest, it would not -- you would -- given what they have told us about the natural succession of the vegetation development on accreted land, I wouldn't expect the forest during an accretional cycle to be where the water would come in and erode. Because it only grows up after you have had land that's been maturing and protected by newer dunes and grasslands and such.

Q. Do you know if the consultants that have been retained have specifically looked at the effect that a maritime forest could have on erosion control?

A. They've talked to us about wave action, and I don't recall the conclusions. Again, if you are talking about erosion control in the sense of surf eating away at land, I don't know that they've talk specifically about the effect of a mature forest on that.

Q. What about --

A. I mean --

Q. I'm sorry. I didn't mean to interrupt you.

A. I mean, the forest -- you would think the forest only interacts with the ocean if you're in an erosional phase where you are losing land. Because otherwise, the forest is not going to grow up on a front dune.

Q. What other maritime forests have you seen?

A. Capers Island, Bull Island, Botany Bay Wildlife Area are three I can think of right away.

Q. And all three of those are available to the public?

A. Yes.

Q. Owned by the state?

A. Bull is a federal preserve. Botany Bay and Capers are state.

Q. What impact does a maritime forest have on vegetation management?

A. I'm not quite sure how to answer that question because that -- it -- it is vegetation. It is a type of vegetation.

Q. What impact does the development of a maritime forest have on educational programs?

A. I would think that it potentially offers a wide range of opportunities for environmental education.

Q. Have any specifics been discussed in that regard?

A. There's been some discussion about a nature trail that at least used to exist in front of the elementary school. It had some signage. I think it was a sort of, you know, elementary kind of effort, pardon the pun.

We have talked also, though, about ways that you could potentially have some more sophisticated kinds of trails with, you know, more informative signage to help people know what they were looking at. There's also opportunities for research that can be done in a nonimpactful way.

Q. And what are you specifically referencing?

A. Well, the study of various animals and -- and vegetation and how they exist and coexist in that type of a reason -- that type of a pretty unique environment.

Q. What impact, if any, does the maritime -- development of a maritime forest have on public safety?

A. I'm not aware that it has a tremendous impact. We've heard a few people worry about the potential for criminals to lurk in that kind of an area, just as they lurk in a lot of other areas.

Q. So no tremendous impact of -- any impact at all?

A. I can't answer that sort of a hypothetical.

Q. In all fairness, the -- a program to develop a maritime forest that does not exist is all prospective, so everything is hypothetical. So is -- as you are making the assessment of whether to go forward with that, what considerations have -- have you given to the impact that a maritime forest would have on public safety?

A. We have inquired as -- of the police chief about the number of incidents that have involved people who were lurking in that environment. And my recollection is that there have not been that many. There was one well-publicized case a couple of years ago. But by and large, I -- I think we were told there was not a -- there was not a large number of cases.

Q. The well-publicized case, what -- what are you referring to?

A. There was a lady who was assaulted while walking down a path at night, I believe. I may be wrong about that, about the time of day. The assailant was captured and booked. I don't know what happened.

Q. Was that path?

A. Hopefully convicted.

Q. Was that path one of the paths through the forested areas?

A. I believe it was.

Q. So in evaluating the -- the public safety, what impact, if any, do -- do you give to scenarios such as that?

A. Well, I give as much impact to that, as much weight to that as -- you know, again, it's a matter of how many cases in that area versus in other areas. And we have other crimes that are committed against people in -- in all areas of Sullivan's Island, unfortunately.

Q. Any other consideration of public safety that's -- that you've taken into consideration related to the development of a maritime forest on accreted land?

A. Well, one of the ways in which we've addressed that is as we were looking at some of the

earlier recommendations from the consultants and trying to give them some general guidance for what we were looking for in a final draft plan from them, two other Council members and I collaborated on drafting what we called some principles and guidelines for the final report to us. And those were reviewed by all of Council, and all of Council agreed to send it to the consultants.

And one of the elements that we told them we wanted them to consider very seriously was to create a buffer or transition zone between the adjacent private property owners and the protected land, be it maritime forest or otherwise, so that there would be a band parallel to the beach on the backside of that accreted land which would incorporate the -- the last "X" number of feet, where it would be managed differently and managed more aggressively so that there might would be more cutting so that --

Because we had had reports from people who lived adjacent to it that essentially they didn't think we were being good neighbors with the way we managed this land that it came right up against their property. So we told them we wanted the plan to include a buffer area to provide some

degree of transition and partial separation for the property owners. Something like that would mean that you're not smack up against something that's overgrown, which there would be some open area -- or more open area, depending on where the -- where on the island that would be.

Q. When you say more aggressively manage, what does that mean?

A. Well, one of the things they recommended in some areas would be to actually cut in strips, cut all the vegetation down, with the exception of any beginning trees that were worthy. And then on a regular basis, cut that down, maybe seed it with wildflowers or something like that. Or just let it go up with naturally occurring grasslands.

But that every two or three years, you would then take it -- take strips of it back down so that it never grows up very, very high in that -- in that strip next to private properties.

Q. So the idea of a more aggressive management is more cutting?

A. Well, aggressive in the sense of, you know, being willing to cut and -- and cutting more.

Q. What impact, if any, does the

development of a maritime forest have on public health?

A. I guess to the extent that more trees and vegetation are good for the atmosphere, I would see that as a real plus.

Q. Okay. Anything else?

A. You know, people talk about planting trees to have better air, so --

I'm sure there's some others, but I can't think of it.

Q. Are there any negative implications of a maritime forest on public health that you are aware of?

A. From a public health standpoint, I'm not aware of any. That doesn't mean there aren't some.

Q. Is that something that's -- that's been considered, presented to Council? Public health implications?

A. I don't know that we've gone into that in any great detail in either -- on either side of that question, people saying it's really good for it or really bad for it.

Q. What impact, if any, does the development of a maritime forest have on scenic

enhancement?

A. I'm not sure exactly how you mean scenic enhancement. If you mean general views for the population, I would think that the development of a maritime forest could be beneficial, in that as people are able to go through it, they could see a greater variety and diversity of environments as they go to and from the beach.

Q. How do you define scenic enhancement?

A. In my view, so to speak, we're -- I look at it as attractive views. It's a term I have not heard outside of the Land Trust document, I have to say.

Q. Scenic enhancement, is it something that's been presented to Town Council as a factor to consider in developing an accreted land management plan?

A. I think the overall impact of whatever plan we use on the health of that property and on the residents would include that.

Q. Specifically, has scenic enhancement been addressed?

A. I can't say that we've looked at it in isolation.

Q. How have you looked at scenic

enhancement?

A. Just the way that I just said, just as part of the overall value of the land.

Q. And what are the relative pros and cons of scenic enhancement as relates to a -- a maritime forest?

A. I'm not sure I can answer that question, given that we're not even sure what we mean by scenic enhancement.

Q. Okay. Let's back up. Let's use your definition of scenic enhancement.

A. Okay.

Q. And you said my view was attractive use.

A. Okay.

Q. So my question --

A. Attractive, to me, would include a variety of natural vegetation, possibly wildlife, and a variety of it.

Q. Are there -- are you aware of competing concerns for what other people consider to be attractive views?

A. I'm aware that some people consider scenic enhancement to be synonymous with ocean views. That's why I said the term is a little

confusing to me.

Q. And how do you sort of mete out which view is, you know, more compelling?

A. I think that's something the Council has to balance out as we come -- as we address the final type of plan that we want to go with. Okay? As we do with competing views about -- competing opinions about almost any other issue that we take up.

We typically always have people who are on one side or another of an issue, who are residents who are telling us about that. So our job is to try to weigh that information and come up with a decision that is best for the overall community.

Q. And how is that the -- the opinion of the residents has been measured as it relates to what the particular residents consider to be attractive views?

A. That's just been part of the overall process that we've gone through. We've gotten -- and we've actively sought public input on all of the issues involved with the management of this land. I know Council has been receiving public input on the management of this land since

the Land Trust agreement was executed back in 1991.
During the current project with the consultants, we started out with, I think, one public meeting where we were basically introducing the team of consultants to the community to the residents. And each of them spoke about what their expertise was and what they saw as the issues going forward.
And we've had at least one other public meeting that was well advertised where they presented their -- their draft plan. In fact, I think there were -- there might have been two. I can't really remember at this point. But we had a good turnout. We've advertised it. We give people a chance to speak. We've received written input during and before and after these meetings.
Q. Are you able to quantify how the population breaks down on this, you know, divergence of attractive views?
A. We've not attempted to do something like a survey where you would try to sample the opinion of the -- sample the island on some sort of a very representative basis to come up with specific percentages.
Q. Is that something that is coming in the

future? Or is that something that is not necessary from the perspective --
A. I'm not aware that we're planning to specifically try to enumerate each and every person's opinion, categorize those opinions, and then say here's how the breakdown is. You know, as we do on every other issue, we receive a lot of input and we factor that in with a lot of other things in making our decision. But we're not -- we don't typically do polling.
Q. But how do you quantify the public input when you have these sort of divergent views about the same question?
A. Well, that's why -- I'm not being very clear. I'm not sure that we specifically try to quantify it. We try to learn about -- learn what people's views are, but that doesn't necessarily translate into a specific quantifiable summary.
Q. Do you agree that whether the accreted land is -- all vegetation is trimmed to 3 feet or whether a maritime forest is permitted in the whole area or something in between, that any -- anywhere along that spectrum, the accreted land would still be green space?
A. I guess. I hadn't thought about it in

those terms. By green space, you mean something without development on it? Without any structures --
Q. Yeah. I mean, how do you --
A. -- or concrete?
Q. How -- how do you define or connote green space, as we see that term today?
A. I think green space covers a wide variety of -- of environments like that.
Q. So you agree with me that -- that wherever you end up on the spectrum, the accreted land is still going to be green space?
A. Depending on your definition of green space, which it may have some more specific meaning that I'm not aware of.
Q. Okay. Well, under your definition of it, would you agree with me that --
A. Well, if my definition is that it won't have any structures on it, it won't have any concrete on it, it won't have been -- the land won't have been disturbed itself in the sense of recontoured or altered, then I guess that would qualify as green space.
Q. And you appreciate that there are residents on Sullivan's Island who derive aesthetic

enjoyment from being able to see the ocean?
A. Absolutely.
Q. And you appreciate that there are residents of Sullivan's Island who derive aesthetic enjoyment from being able to see the beach?
A. Sure.
Q. And you acknowledge there are residents who derive aesthetic enjoyment from the ocean breezes as well?
A. Sure. I do on my porch back on Thompson Avenue.
Q. You have an unobstructed view?
A. No. I have no view, not of the beach.
Q. What -- what is your view?
A. I have a view of the marsh, but the ocean breezes come from the other side.
Q. What about the -- I mean, do you have a maritime forest in front of your house?
A. No. In neither direction.
Q. Do you have an unobstructed view of the marsh?
A. No. There's trees that dot it here and there. There's a spoil area that's between some of the marsh and the remainder of the marsh by the waterway.

Q. You're talking about the spoil area that's on the edge of the waterway?
A. Yeah. Yeah.
Q. Okay.
A. There's a dock or two that I look -- that's in my view. A cedar tree.
Q. How do you -- as a Town Council member, I mean, how do you try to make a determination of making a decision over whose environmental view is -- is more appropriate and should be managed accordingly when you have one group who may appreciate a maritime forest versus others who may appreciate ocean views as an environmental enjoyment?
A. It's -- you know, there's no specific metric that I'm aware of that we could or should follow for that. I think we have to weigh everybody's opinions, weigh all the different issues, and ultimately make a decision for the best management of that particular resource --
Q. And then --
A. -- for the Town as a whole.
Q. Okay. And the best management, does that include any sort of economic evaluation?
A. When we retained the consultants in

this project, if that's what you are talking about, it was to help us learn about how to manage the resource. It was looking at it from the standpoint of the resource itself, what is best for it. That's not to say that's the only issues when Council ultimately comes up with a plan, but that was the focus of that planning process with the consultants.
Q. That really wasn't my question.
A. Before you could get to the political decision, you needed a science base. You know.
Q. In that science-based approach, is there any room for evaluation of the economic impact?
A. That was not part of the original scope of that project. And the team didn't -- we did not seek to get a team of expertise in that area, nor did we get one, to my knowledge.
Q. Okay. And I'm not asking about the consultants. I'm asking about the Town, you.
A. Uh-huh.
Q. And when you come to make a determination about whether to proceed with a management plan, that is anywhere in the spectrum that we've discussed --

A. Uh-huh.
Q. -- from no management at all, let it grow, to trimming it all the way to 3 feet, for example?
A. Uh-huh.
Q. When do you consider the economic impact that that management plan will have?
A. To whatever extent it's considered, it would be between -- it would be sometime before we come up with the final plan. I mean, for example, if we're talking about different approaches to management, the management which the Town will assume responsibility of will have a cost. So it will need to consider the financial implications of that as part of the economic impact.
Q. Okay. What about the economic impact to the adjacent property owners?
A. That's not been our major focus. That's not to say we wouldn't consider it in the future. I don't have in my mind a specific means by which we would address that or assess it.
Q. I'm confused. If you're talking about enacting an ordinance -- well, first of all, let me back up.
Do you acknowledge that the development

of a maritime forest will have an economic impact on the adjacent property owners?
A. I'm not able to say that. But if you are talking about the development of a maritime forest, you're talking about something which occurs over decades. And there's -- I don't know anything about real estate appraisal or evaluation, but there's a lot of other factors that come into play during that same time. I think it would be difficult to demonstrate a specific impact.
Q. Why would the Town Council not be interested in evaluating economic impact of -- on its residents of a zoning ordinance?
A. I did not say the Town Council would not be interested in that. I said at this point, I'm not sure how you would go about assessing it.
Q. Is there any intention to ever evaluate the economic impact of the accreted land management plan?
A. That would be a decision that all of Council would have to make.
Q. Whether to consider it or not?
A. In what way to consider it. Certainly it's an issue that we'll hear about it, and that will cause us to consider it.

Q. If there -- you've seen the -- well, you were present for the meeting where Tommy Hartnett spoke?

A. Uh-huh.

Q. And you saw his written summary of his opinions about the impact, economic impact, that obstructing of the -- or blocking of the ocean view and breezes would have on the residents?

A. I did.

Q. If you take that as true -- and I'm not asking you to, but just if you take it as true -- how do you measure that economic impact in connection with what we've been talking about, the flora and fauna management impact that you have been discussing?

A. That's one of the issue. That's one of a number of issues that we have to consider -- or will consider, to some extent.

Q. In the event that you have a -- you know, assuming that his evaluation is correct -- and you've been to Mr. McCutchen's house; it has a million-dollar decrease in the economic value of his house.

A. I have no information as to what kind of decrease in the value of his house he's

experienced.

Q. Okay. You saw Mr. Hartnett's report?

A. I read it.

Q. Okay. And he --

A. His letter. Yeah.

Q. Yeah. And he stated in his letter that the front beach homeowners that have that obstructed view will experience an economic depreciation in the value of their real estate of approximately a million dollars?

A. I did see that that was his opinion.

Q. And how many homeowners are there adjacent to the accreted land management plan?

A. I don't remember the specific number. I have heard 100 or somewhere between 100 and 150, I believe. But I could be very wrong about that. It's not a number I have available.

Q. And if you multiply the economic impact of one homeowner over the class of homeowners who would potentially be impacted, do you agree that that becomes a very significant economic impact on that group of people?

A. Well, you stipulated that if I were willing to multiple the number of properties by a million dollars that that would be an estimate of

the impact. And I haven't thought about it enough to know whether that's valid.

Again, if you are talking about the development of a maritime forest, you are talking about something that happens over decades, during which time a number of other things are going to influence property values.

Q. For example? What?

A. Recessions. Increased demand for people to live on Sullivan's Island. Prior to the real estate bubble bursting, as everybody in this room knows, we had a tremendous surge in demand for property on Sullivan's Island for a number of years. And prices, from my -- from what I have heard went up higher than they did on just about any other -- any other area of Charleston, from what I have heard. Again, that's not my area, so --

You could have a fire. You could have a hurricane. You know, I reference Hurricane Hugo. You could have an earthquake.

Q. Are you aware of the changes that have been enacted in the ordinances dealing with the management of the vegetation on accreted land from 1991 to date?

A. Generally.

Q. Okay. Was -- and I don't need you to tell me the years things were done or the zoning numbers or things of that nature -- but what is your general understanding of what changes were made from '91 to date?

A. There was an ad hoc committee -- well, let me back up. What's -- the focus of those changes have been on the way and extent to which the Town permits adjacent property owners to cut vegetation on the portion of the accreted land adjacent to their property going seaward. There was a lot of concern after one or more incidents of severe cutting not long after -- not terribly long after the Land Trust deed was executed. This was before I was involved on Council.

But Council formed a -- an ad hoc committee with representation from people who were on all sides of the issue. It was chaired by Mark Tanenbaum -- cochaired by Mark Tanenbaum and AlysAnne Wiedeke. They met numerous times to try to come up with some recommendations. And I don't remember whether their recommendations were enacted intact, but I believe that there was an ordinance around the late -- late '94 or early '95 which was

the result of their discussions about what to do with the cutting.

And it continued to permit cutting at -- restricted to season. I don't know whether the season during which cutting could be done formally -- formerly was limited. It specified the types of vegetation that could be cut, and it specified the height to which -- or the limit on how far down they could be cut, in other words, the minimum height, which I believe was 7 feet.

Q. When is the first time you saw the restrictive covenants contained in the Lowcountry Open Land Trust deed?

A. The actual document? I don't have a recollection as to when I first saw it.

Q. I mean, was it --

A. I was not involved in that process. I was not involved in -- in any way with Town government during that. I went to a couple of planning commission meetings.

Q. Was the first time that -- that you saw it when this lawsuit started?

A. Oh, no. I had seen it years before then. I just don't remember how far back.

Q. Okay. Is there any evaluation of the

economic impact beyond property values that a maritime forest would have on Sullivan's Island?

A. Not a specific economic study. And I guess I would -- I'm still a little confused by that collection of questions. Because when you say the economic impact that a forest would have, we already have a maritime forest in some areas of the island. And again, any increase in -- you could have a great decrease in that if it were all cut down overnight. But any increase in the maritime forest would occur on a very different scale of time, a much longer scale of time.

Q. Has there ever been a referendum that you're aware of related to changes to the management of the accreted land that was subject to the Open Land Trust deed?

A. No.

Q. What's the projected cost for the accreted land management for the Town?

A. We've recently requested some very, very rough estimates. I can't remember what those were. But the cost will absolutely depend on the specific plan that we choose and on the time frame in which we choose to implement that.

Q. Was there a historical cost analysis

evaluating what previously has been spent to oversee the accreted land?

A. No.

Q. Approximately how much money was spent on an annual basis to evaluate the condition of the accreted land by the Town?

A. I can't answer that. Like I said, we had a part -- the part-time services of a forester to oversee the cutting that was down and -- under permit.

Q. And that was to verify that the permitted cutting was being performed in accordance with the permits?

A. Correct.

Q. And across the spectrum there, that would be a relatively small cost item for the Town?

A. If all you did was to evaluate that under -- with the current level of cutting, if that were to continue, yeah.

Q. And that's historically since 1991, that's what the Town has paid to manage the accreted land. Is that fair to say?

A. There's probably some other expenses that I'm not thinking of.

Q. Where does the money come to manage the

accreted land, if you are going to exercise one of these options that requires the active management that's contained in the proposed plan?

A. That will be one of the things Council needs to decide and probably part of the decision about what to do and how quickly to do it and where to start doing it as the available sources of revenue. We've talked quite a bit about potential grant resources that we might be able to avail ourselves of.

Q. What about transfer taxes on real estate?

A. My understanding is that those are not permitted in South Carolina.

Q. Any other type of user tax or -- or tax on the residents that would go to pay for the management of the accreted land?

A. Well, you know, the budget -- our revenues come from a variety of sources. We have revenues that do come from property taxes by individual property owners on -- who own property, individuals who own property on the island. We have revenue that comes from other sources, the sales tax. Accommodations and hospitality, all those different types of other taxes have -- many

of them have restrictions on them in terms of the types of uses to which you can put them.

But so we've got a whole menu of revenue streams, none of which is as big as we wish. But it would depend on what we wanted to do and how and when as to how much we -- that would require. And then we'd have to look at our potential revenue sources.

Q. And what percentage of the revenue is derived from property taxes?

A. You know, that's a number I should be able to give you, but I can't.

Q. In addition to the economic impact we talked about earlier on the actual residents of the island, where those residents' views are blocked, has any attention been paid to the ramifications that any potential decrease in valuation would have on the property tax revenues by the Town?

A. No. There's not. Because we've -- I mean, that obviously presupposes that there would be a reduction in the value of property from the property values from their current levels.

Q. Do you have any reason to believe that there would not, in fact, be a reduction in property values if up-front beach houses no longer

has an ocean view?

A. Again, it's not my area of expertise. But I personally have not seen anything to convince me that individuals' properties have actually in absolute terms decreased in value as a result -- or during the time in which there was an increase in vegetation near their homes.

Q. And what -- and what type of absolute evidence is it that -- that you need to assuage any concern you have that there is, in fact, a negative economic impact?

A. Well, the absolute -- I mean, absolute to apply to the reduction in value, not evidence. But what I meant was I have not, to my knowledge, seen evidence that individuals who bought a piece of property for "X" hundred thousand dollars or "X" million now have that property valued at less than they paid for it, if you accept the last two or three years of recession and real estate bust.

Q. Who would you defer to that has expertise in the area of real estate values to make a determination whether there is, in fact, an economic impact on the residents of Sullivan's Island in the event that their ocean views --

A. Probably the County Assessor's office.

They're the ones who set property values for tax purposes.

Q. Is that an area where you would retain a consultant to evaluate the impact of that to advise the residents and Town Council of the potential economic impact of the Town's decision to manage the accreted land?

A. I think that would be a decision all of Council would have to make.

Q. Do you take exception to the evaluation that was provided by Mr. Hartnett?

A. I view it as his opinion, if we're thinking about personal opinions. As I said, I have not seen evidence that someone has had a drop in absolute value of their property. What I have heard people talk about more is a lesser level of appreciation than they had expected or hoped for, rather than an absolute reduction in value.

Q. I don't understand. What does that mean?

A. Well, if you pay a million dollars for something and it's only worth 500 today, you have suffered an absolute reduction, absolute loss of value. If you pay a million dollars and it only goes up to two million dollars next year, that's

not an absolute drop. If you expected it to go up to three, then you've suffered a reduction compared to what your expectations were.

Q. Okay. Have you seen any evidence of property owners who have been unable to sell real estate as a result of the vegetation?

A. No.

Q. Would that be significant to you, if purchasers of real estate were making it known that vegetation status was a reason they weren't purchasing a particular piece of property on Sullivan's Island?

A. I think if there was a widespread rejection of properties along there, that that might be something to consider. I would want to know more about it. I would want to know whether the properties were priced reasonably.

Q. How do you determine whether something is priced reasonably?

A. I guess you look and see if it sells.

Q. Well --

A. But again, that's not my area of expertise.

Q. But it is Mr. Hartnett's area of expertise.

A. He's one person who works in providing real estate appraisals.

Q. All right. But in the absence of anything to the contrary, why -- why would you not at least consider what he has said as a factor in evaluating the decision in this case?

A. I'm not -- can you say that a little differently?

Q. Sure. As I understand it, the Town has not engaged its own consultant or evaluated the economic impact of the vegetation growth on the residents of Sullivan's Island.

A. Uh-huh.

Q. Mr. Hartnett was engaged to do that, and he presented his opinion in that regard.

A. Uh-huh.

Q. And in the face of that being the only expert in that area who has offered an opinion about the values, why would you not be considering that in the determination of whether to proceed under this proposed agreement?

A. Oh, I'm not saying it would not be considered ever. I'm saying, thus far, it's not been a factor in our evaluation of a management plan. But we've not decided on a final plan.

Q. All right. So is it fair for me to say that thus far, you have not considered the economic impact in your evaluation of a management plan for the accreted land?

A. Thus far, I have not made a final decision personally about the best approaches to managing that land. And in our initial decision making, that was not a primary factor.

Q. Okay. Is it fair to say that thus far, you have not considered the economic impact for purposes of determining the appropriateness of the accreted land management plan?

A. I don't think that's fair to say. Because I think we've heard about it from a number of the folks in this room. So it's obviously been an issue that's been raised.

Q. There's a difference between an issue being raised and you hearing it and you considering it and evaluating it and making that part of your decision-making process. And so what I wanted to know is whether you have actually made the economic impact part of your decision-making process or not.

A. Not thus far.

Q. So would it be fair to say that thus far, you have not taken the economic impact into

consideration?

A. Correct.

Q. Is Town Council a paid position?

A. No.

Q. Do you get any benefits as being a member of Town Council, through the state or otherwise?

A. No. I don't. I am an employee under the state system. I believe that it is possible for a Town Council member who is not already in the state system to get a token payment and get some sort of credit for retirement within the state system. But if you are already in the state system at the time you are on Council, you don't get that.

Q. How long have you been in the state system?

A. I think I have got 31 years of credit. I think I bought a couple of years.

Q. What committees and subcommittees have you served on as part of Town Council?

A. On Council, I'm the chair of real estate. I'm on police and fire. I have been on building.

Q. Any others?

A. All members of Council serve on -- as

ways and means committee.

Q. Okay. But so the ways and means committee is the full --

A. I mean, as a whole. Yeah.

Q. As the chairman of the real estate committee, what -- what all does that entail?

A. Just trying to organize the work of that committee. And it's probably worth noting that we have committees on Council. Depending on the committee, sometimes they will meet separately. More often, we have a sort of all-at-once series of committee meetings, such as we did last night, where we go over business of each committee, but all Council is there and all Council participates.

Q. But specifically as far as the real estate committee goes, what type of work do you do?

A. We try to help see our agenda items through. I'm the contact with Andy Benke, for example. If it's, you know, something -- well, just about everything would involve Andy, so I'm the committee's primary contact with Andy to see about -- to check on the implementation of matters that Council and the committee have already decided on.

Q. And what is the scope that the real

estate committee has? I mean, are you dealing with the -- the use of property? The commercial use of the property? Residential use?

A. We deal with the -- the broadest scope has to do with -- this is the committee that is involved with the zoning, the zoning ordinance. So that is residential, that's commercial, that's RC1 and RC2 areas that -- our Chapter 21, which is the zoning ordinances.

We have been involved informally with the creation of the design review board, for example, which is created under our zoning ordinance. My first several years on Council, we were very, very, very involved in a complete -- not complete, but a very large-scale revision of our zoning ordinances. So that was the primary function of that committee. But we also are charged with looking after the -- with making recommendations about looking after Town-owned properties.

Q. Do you do any work, you know, evaluating or monitoring the status or value of the real estate in general on the island?

A. No. No, that's not our thing.

Q. Do y'all -- y'all monitor it?

A. No. It's not -- that's not part of our charge.

Q. What about the receipt of taxes and money as a result of real estate transactions and taxes and things of that nature? Is that something that falls under the real estate committee's purview?

A. No. I'm -- I'm not aware that we get any revenues from the transaction per se, other than minor box-stamp stuff. But I guess that goes to the county.

Q. What about the accreted land? Does that management of the accreted land, does that fall under the purview of the real estate committee?

A. That's been the -- that's the committee that's had responsibility for seeing that project through, for example. But that's been done with all of Council participating. The real estate committee does not in any way act unilaterally on much of anything.

Q. Has there been any action by the real estate committee that was separate from action by the whole Town Council related to the accreted land?

A. I think we probably met early on to try to come up with proposed RFQ, which was then vetted by Council. I think we -- I know we had met on one or more occasions with Dr. Kana concerning getting that project underway and, then at the end, figuring out what we needed to do to get the final product that we wanted. It had got -- we had to add a little bit of work and a little bit of money to the contract.

But again, we don't make the decisions. We've been the group that sort of gets the information, makes recommendations to Council. And then Council decides.

Q. Who all is on the real estate committee?

A. Michael Perkis, Jerry Kaynard, and myself.

Q. And y'all's committee meetings, y'all conduct those at Town Hall?

A. Yeah.

Q. And is that normal for committees or the Council to hold -- when you are doing business to be present at Town Hall to do your business?

A. Uh-huh.

Q. Is that a yes?

A. Yes. Sorry.

Q. I'm not being rude.

A. Sorry.

Q. That's no problem.

What does the building and construction committee do, that you're --

A. Primarily oversees the permitting processes involving building. The report that we get each month tells us about the number of permits that have been issued, the fees that have been collected for that. We get a comparison to prior years, same month last year, cumulative year-to-dates on that.

Issues with, for example, complying with the FEMA requirements for flood insurance. The building inspector and his assistant are involved in that.

Q. The applications for permits to do pruning to vegetation on the accreted land, is that something that comes under the purview of the real estate committee? Or does that just go to Town administration?

A. It goes to Town administration. We've been given reports in the past of how many permits have been issued, but I don't remember whose

committee agenda it was on. I mean, we all get a book with all the same stuff in it from all the committees.

Q. What kind of book is that?

A. Like a three-ring binder.

Q. A binder?

A. Yeah. Just our meeting book with the agenda and any related documents.

Q. Now Mr. or -- yeah. Mr. Bluestein and his wife applied for a vegetation permit that was recently denied.

A. Uh-huh.

Q. Did you see that?

A. I did.

Q. Was that application brought to your attention? Or was that just done through the zoning office?

A. It was done through the zoning office. We learned about it, but we have no judgment to pass on.

Q. Can the committee or the Council as a whole instruct the administrator on how to respond to something like that?

A. The only time that, to my knowledge, that Council would -- has been involved in guiding

an administrator with a sort of -- with a permitting decision has been if it's been an area that was -- an issue that was very confusing, that was not clear, where the guidelines and the ordinances and procedures that the administrator had to follow didn't dictate what their decision should be, in their best judgment.

That's the case for a number of things. We've had an issue with somebody who had an inordinately large water bill that has been coming up for the last two or three weeks -- two or three meetings. Because that person wanted forgiveness from the sewage charges because his landscaper used the Town water to -- used thousands of gallons of Town water to water his vegetation and wanted the Town to forgive the sewer part of his water bill since he said that he -- that was something that ultimately came to the water and sewer committee, which I'm not on. But they brought it up, for example, last night.

So that is an issue, if it's something particularly nettlesome and unclear, that might be brought to us. But the incident that you mentioned was not.

Q. And what about, for example, in this

instance where Mr. Bluestein and his wife suggested that the appropriate ordinance was one that was not currently on the books and that current ordinance was not applicable? Is that something that the Town administrator or the Town administration was able to handle without the direction of Council or a committee?

A. Typically, yes. I would expect that he would confer with our Town attorney.

Q. And then you're the police and fire committee now?

A. I'm on those. Yes.

Q. All right. And as part of that committee, have you evaluated the public safety ramifications for the accreted land management plan?

A. That does not come before those committees. Those issues have come up, as noted -- I mean, when we were talking about access lanes that were recommended by the consultants in their final draft. But the fire chief was a participant in those discussions with all of Council.

Q. Okay. So that didn't go through committee. It just came to the whole Council?

A. Well, it was in part of our overall

Council review of that plan.

Q. What about the fire department has -- is your role as serving on the committee for the fire department? Have y'all --

A. I'm not sure I'm still on fire, by the way. I should revise that. I was on fire for a long time.

Q. Sort of in the last year and a half?

A. It's not a committee that meets separately.

Q. Oh, police and fire is together?

A. No. But I mean the fire committee, as long as I have been on the Council, has never had a meeting outside of the overall Council committee's meeting. The police committee, for example, in the past on occasion and the present will sometimes have just the three members meet because they have a lot more to talk about than we want to devote all of Council's time to. So that committee might meet separately. Water and sewer does the same thing sometimes. But not fire. That's why I'm -- I can't remember.

Q. Has any consideration been given to the potential fire hazards associated with a maritime forest?

A. That was brought up by the consultants in -- in great -- to some great length.

Q. Any independent evaluation conducted by you or Council or committee related to the fire threat related to either a maritime forest or vegetation in the accreted land?

A. Well, the consultants gave us some information on that.

Q. Other than that, is there any additional --

A. Other than that, no. Not to my knowledge.

Q. Okay. And what was the advice regarding the potential fire hazard that you received?

A. You know, it was mixed. Because at one point, the consultant said that wax myrtles were highly flammable. And then at a later time, he did acknowledge that you have to get a very, very hot fire to torch them, to get them to light.

There was some discussion of the contributing role of denser undergrowth that you get when you are trimming things like a wax myrtle, relative to when you let them grow and you have less vegetation on the ground to provide fuel for a

fire. So it's been looked at from a number of different angles, both by the fire chief and by the consultants.

Q. Is there a conclusion as to the role the potential fire hazard has in how you develop a plan for the accreted land?

A. That is something that we've considered. And it's been a -- that has been a factor in our decisions. For example, with the buffer zone that I was talking about, we actually had some very explicit discussions, a meeting -- one or two meetings ago with all of Council and the fire chief about how much space you need between adjacent houses and, you know, free-growing vegetation to provide the necessary fire block, if you will. There was also discussions about what -- you know, how many paths we needed that were wide enough to get firefighting equipment down.

Q. As a member of Town Council, are you serving for the benefit of the residents of the Town of Sullivan's Island?

A. Of course.

Q. Do you agree that the -- that any unreasonable risk of harm to property should be avoided in develop an accreted land management

plan?

A. I agree that any unreasonable risk should be avoided.

Q. Do you agree that any unreasonable risk of -- or a threat of harm to a person should be avoided in development of an accreted land management plan?

A. I agree that any unreasonable risk of harm to a person should be avoided.

Q. And do you consider the risk of a fire and a threat or fire hazard associated with dense vegetation, such as wax myrtles, to create an unreasonable risk of harm to property or life?

A. Not necessarily. It depends on where they are and how many there are and how close.

Q. How do you make that determination?

A. We ask people like the fire chief, like we did.

Q. Did you draw any lessons from the experience in Myrtle Beach?

A. My understanding is that the Myrtle Beach fire was primarily pines, which we have very few of in that land. I may be wrong about that, but --

Q. Anyone else you listened to in making a

determination whether the fire hazard creates an unreasonable risk of harm to property with regards to the accreted land?

A. At this point, I think those are the sources of information we've obtained. When the consultant told us about wax myrtles being flammable, I cut off a branch from one of mine and tried to set it on fire and couldn't. But I don't consider myself a fire expert.

Q. Do you have any idea how hot a brush fire gets?

A. Quite hot. But I can't give you the degrees. Again, the fire chief and the consultants were taking that into account.

Q. Well, I mean, y'all have ordinances preventing the discharge of fireworks in the dunes, don't you?

A. We have anti-fireworks -- we prohibit fireworks all over on the island.

Q. And one of the risks of harm associated with fireworks is unintended fires. Do you agree with that?

A. Can be.

Q. And fire creates a potential hazard for life and property?

A. If there is life and property around it, in contact with it.

Q. All right. Would you agree that there is life and property in close proximity to the accreted land on Sullivan's Island?

A. I can't say that it's -- it's close enough to where it creates an unreasonable risk of harm from fire. We do have life and property near it.

Q. Is there any way to -- for me to evaluate, looking back at y'all's consideration, how you factor that in?

A. I just told you what the processes were that we went through with that.

Q. Asking the fire chief?

A. The reports from the consultant and the fire chief.

Q. Does the proximity of the vegetation to the property come into consideration as to the risk of harm that is posed there?

A. Correct. And that's why we are interested in having that buffer zone, for example.

Q. What about people who have that current risk who -- who want to try to mitigate the risk by reducing the vegetation in close proximity to their

home? Is that an available option for them at this time?

A. The only cutting that is allowed is what you are aware of under our ordinance. We were also reminded by the fire chief that we've had very, very few instances of any significant fires in that area.

Q. Do you know how many fires they had in Myrtle Beach prior to that fire?

A. I don't. Again, I'm not sure that the Myrtle Beach fire is a -- is an appropriate analogy here.

Q. But it only takes one, you agree with that, to be catastrophic?

A. Well again, I'm not sure that the Myrtle Beach fires are analogous to our situation here.

Q. And -- fair enough. And I'm talking about Sullivan's Island. It only takes one fire in the accreted land to be catastrophic. You would agree with that?

A. I don't agree with that. Because that assumes that it would spread rapidly, so rapidly and broadly that it could not be controlled.

Q. Do you not think it would be

catastrophic to the environment itself and the flora and the fauna that we discussed?

A. Again, if there were to be any fire? Or if there were to be a broad sweeping fire that destroyed the whole land? I'm not following you.

Q. Okay. As the accreted land is currently managed, is there a fire management plan in place?

A. I'm sure the fire department has some -- well, the fire department has plans for addressing fires in that area. They have done it before. When there have been small fires, they were all contained.

Q. Are you aware of any fire containment or management plans that -- that exist?

A. I can't tell you specifically. When we were talking with the chief about it, it sounded like they did have one. But I can't say with certainty that they've got a formal written plan.

Q. What about public safety? Do you agree that one bad incident related to the life or welfare of a person is catastrophic?

A. To that person?

Q. To the whole community.

A. That's a bit of a stretch. I mean, to

the extent that, you know, anyone's life is ruined or ended, that's a loss to all of the community.

Q. So why is that a stretch?

A. Well, to -- if you are implying that it's a catastrophic loss to the community, I'm not sure I would go that far. I don't mean to be cold about it, but --

Q. Yeah. Well, if someone is physically assaulted, for example --

A. Uh-huh.

Q. -- do you think that is -- has a negative impact on the island as a whole?

A. Sure it does. And we've had problems with physical assaults in a variety of places on the island.

Q. Are you familiar with the history of the accreted land prior to the acquisition by the Town or the sale to the Open Land Trust?

A. Not in great detail.

Q. Tell me what was the condition of the accreted land at the time of the sale to the Town from the Open Land Trust in 1991?

A. So in 1991?

Q. Yeah.

A. Again, I did not have great intimate

familiarity with all of it. I was familiar with the part that I walked down, at the Station 17 path in particular. And it went from some -- starting closer to the houses, the various trees, hackberries, willows, a few cedar trees, maybe the odd pine here and there or progression of, I don't know how far, probably a block or more.

And then again, you would be going downward toward -- down that successional process of vegetation -- that you see with vegetation development with accreting land. So it would go from that to low-lying -- lower bushes to grass -- dunes and grasslands. In that area, it was enough vegetation that there was a canopy cover over the path, or part of it -- enough trees that there was canopy cover.

Q. Pursuant to the -- to the deed and the restrictions contained in the deed from 1991, does the Town have an obligation to maintain the accreted land in the condition it was in in 1991?

A. My understanding is we have obligations to retain it in a natural state. I'm not aware that the document requires us to essentially freeze it as it was in 1991. But that's my interpretation.

Q. Okay. What is your interpretation of the Town's obligations under those restrictive covenants that are contained in the deed? I understand that you just said to maintain its natural state.

A. Yeah.

Q. Anything else?

A. We have the capacity to make certain times of modifications to it, should we choose to, for a number of enumerated purposes.

Q. Anything else?

A. I'm sure there's more. I'm just not remembering it.

Q. Do you know if the Town has ever exercised what you consider to be its capacity to make modifications?

A. Sure. When we maintain or expand beach access paths, for example. The Station 16 path, we've installed a couple of culverts because there's wetland areas on either side of the path. The path was built up so that the emergency vehicles could get to the beach, but it was interrupting the flow of water from one side to the other. So we installed a couple of culverts to permit that. The County sprayed for mosquitos.

Q. Any other modifications that the Town has made to -- at least to the accreted land, pursuant to the restrictive covenants contained in the 1991 deed?

A. I think we have permitted the use of, so-called snow fences, where there has been some areas of erosion, to try to assist with dune redevelopment.

Q. Anything else?

A. That's the only ones that I'm thinking offhand.

Q. In 1991, there was an ordinance to trim the -- permitting adjacent landowners moving seaward to trim vegetation to 3 feet.

A. Uh-huh.

Q. Is that correct?

A. That's my understanding.

Q. And that was all vegetation?

A. I think so.

Q. And that changed to 5 feet at some juncture?

A. It changed first to 7 feet.

Q. Okay.

A. In I think early '95, late '94. That was the result of the long drawn-out deliberations

of that ad hoc committee that I told you about that was chaired by Ms. Wiedeke and Mr. Tanenbaum.

Q. That was after George Sink's cutting --

A. After George Sink's deal, yeah.

Q. All right.

A. And they put more restrictions on it. I don't recall what the earlier ordinance said with regard to which time of year you could cut. So I don't know whether that was new or more restrictive. They stated that the lowest that you could cut things to was 7 feet, instead of -- from the 3 feet before.

Q. All right.

A. And they restricted cutting to, as best I can remember, wax myrtles, baccharis, and so-called popcorn trees, Chinese tallow.

Q. And then that ordinance was modified to 5 feet?

A. In 2005 or so, that was modified to 5 feet. And that was in response to complaints from a number of people who were trying to get -- who were getting cutting permits who said that they were having difficulty finding people who would agree to cut it as high as 7 feet. They wanted the capacity to cut it to a lower height. And they

claimed that the higher requirement was, I think, more expensive. So in an effort to try to accommodate their concerns -- or address their concerns, Council voted to amend the ordinance to allow these -- those three species to be cut down to 5 feet.

Q. So is the current state is that same three species you mentioned can be cut to 5 feet?

A. Yes.

Q. And there's a --

A. Tallow trees can be cut down lower on the advice of a forester. They are considered invasive.

Q. Were you on Town Council at the time -- well, you weren't on Town Council at the time it was changed to 7 feet, were you?

A. No.

Q. You were on Town Council at the time it was changed to 5 feet, though?

A. Yes.

Q. When the Town Council made a change to 5 feet, was there a referendum held?

A. No.

Q. Were there specific findings of fact made by the Town Council regarding the impact that

the ordinance would have on the accreted land?

A. I'm sure there were findings of fact in the ordinance change, but I don't recall what they were.

Q. Were there any other findings other than what would be contained in the ordinance?

A. I believe that Council conferred with either the forester that we were using at the time to monitor the cutting and/or someone else with forestry expertise. But that's -- I'm not certain about that.

Q. Okay. Would --

A. I know it was not made hap -- it was not a decision that was made haphazardly.

Q. Did you understand -- in your review of the Open Land Trust transaction and the correspondence subsequent to that, did you learn that one of the reasons for the transaction being conducted in the process that it was was to prevent subsequent Town Councils from implementing their own version of management in the accreted land?

A. I'm sorry. Would you say that one more time?

Q. Yeah. Sure. Did you -- when you went back and looked at the transaction in 1991 and the

documents that were exchanged in and around that time describing the process whereby the Town sold the property to the Lowcountry Open Land Trust for $10 --

A. Uh-huh.

Q. -- and then the land -- Open Land Trust sold it back to the Town for several thousands of dollars after putting restrictive covenants on there, do you understand that process?

A. I do. I'm -- I'm not sure that I recall the dollar amounts.

Q. Fair enough. But you understand that that was the process, there were two sales?

A. I do. Yeah.

Q. And the reason to do that was to eliminate a partial ownership interest and also to prevent Town Council from having a subsequent change of heart and redoing the management of that area?

A. My understanding is that was a process that was chosen so that it would not be subject to change just simply through a regular ordinance change. To try to make it, obviously, not permanent, but very long-lasting.

Q. And the temporal period is 50 years

plus another 50 years?

A. I don't remember. I would have guessed 75, but it may be 50.

Q. Do you think the current land management options that are being considered by Town Council could be rescinded by another Town Council and the vegetation cut to the ground and build a big sand dune, like was one of the options that was originally discussed?

A. I think to that extreme, if you were going to consider that extreme an example, I think -- I would bet the Land Trust would have something to say about it because it would be such a massive change to the topography and to the vegetation.

To your question, assuming we ever come up with a, quote, unquote, final management plan from this current lengthy process, if you are asking me if a future Council could decide to modify that and manage the land differently, but still within the constraints of the Land Trust agreement, I would say absolutely. And I would expect it. That would be all of us expect that whatever we come up with as a management plan here, we'll need to assess it as we go along and it may

have to be modified. But again, it's within the limits that are imposed by that Land Trust agreement.

Q. Has any communication taken place between Town Council and the Land Trust about whether the current proposed action is one of the reserved powers of the Town or if it's something that requires a referendum?

A. My understanding is that the Town administrator has provided them with a copy of the draft plan. And I believe we've heard from them that they're okay with it, but I can't -- I'm not sure about that.

Q. Okay. And your understanding --

A. But we have asked them, obviously, to, you know, tell us whether this would work or not -- well, whether it would be agreement with -- whether it would conform to the agreement.

Q. And you said you have that understanding. How do you have that understanding?

A. Which one? That we sent it to them?

Q. Yeah.

A. I think Andy told me, and I told Council that we had provided them with a copy.

Q. And do you see in the deed itself, it

reserves residents' rights to enforce the terms of the deed restrictions?

A. I believe there's a section to that effect.

Q. And that's -- do you understand that's what is happening in this lawsuit?

A. I know that's been cited in the lawsuit, but I -- I can't understand all the legalities.

MR. JAMES HOOD: I have got a bunch of exhibits I'm getting ready to go through, and this would probably be a good point to take a short break.

THE WITNESS: Especially if we have got to go through that whole book.

MR. JAMES HOOD: Yeah. I'm only on Page 5. So we can go off the record, when you get a chance.

THE VIDEOGRAPHER: We'll now go off the record. The time is approximately 11:51 a.m.

(A recess transpired.)

THE VIDEOGRAPHER: We're now back on the record. Today's date is December 7, 2010. The time is approximately 12:29 p.m. This is Tape Number 2 in the videotape deposition of Patrick

O'Neil, Ph.D.

BY MR. JAMES HOOD:

Q. Mr. O'Neil, do you have any reason to determine one way or another whether the Town's management of vegetation in the accreted land has -- or will have an effect on real estate prices and sales on Sullivan's Island?

A. I have no reason to think that it will.

Q. And we talked about Mr. Hartnett earlier. You have seen his December 11, 2009 letter about his opinions in property values and the effect of the loss of ocean views?

A. I did see that letter.

Q. Okay. Do you have any reason to believe that Mr. Hartnett is not an expert in the field of real estate appraisals?

A. I don't know what his qualifications are. I know that he has been working in the field for some time.

Q. But do you have any knowledge one way or another that may indicate that he is or is not qualified, other than he's worked in the field?

A. I have no knowledge one way or the other.

Q. Do you disagree with his assessment of

the real estate prices on Sullivan's Island?

A. To the extent that he said that they would be so negatively impacted by the long-term increase in vegetation, I personally don't agree with him.

Q. Okay. And why is that?

A. As we've discussed earlier, I think there are any number of other things that can more greatly impact real estate values during the time that the vegetation grows.

Q. Has there been any study or consultant work done to provide support for the disagreement with Mr. Hartnett's assessment of the real estate prices?

A. Not to my knowledge. Not thus far.

Q. Did you see a letter that a Mr. Frank Brumley sent to Johnny Maybank regarding the purchase of a house on the front beach of Sullivan's Island?

A. I don't remember seeing such a letter. I could have and could have forgotten it, but I don't recall that.

Q. Are you familiar with Station 24 on Sullivan's Island?

A. More or less.

Q. If the -- the letter dealt with the decision of Mr. Brumley not to purchase 2429 Atlantic Avenue does that ring any bells, the Manigaults' property?

A. Is that -- what is the number? 24 --

Q. 2429 Atlantic.

A. If that's the -- no, it doesn't ring a bell about that letter. If that's the little house right next to Station 25, I think it probably did just sell recently.

Q. It is the house -- a little house right next to Station 25, right next to the public access.

A. All I know is that it's property sold, recently it was in the paper.

Q. What is -- what are you doing to address the predictability for the management plan for the front beach area? Have you heard some concern about predictability?

A. I'm not sure what you mean by that.

Q. Yeah. It would be residents', potential home buyers', citizens' desire to have an idea of what to expect in regards --

A. Oh.

Q. -- to management as opposed to sort of

a series of changes over time and modifications to management plans that would be, by virtue of the changes, unpredictable.

A. We've -- if you're talking about changes -- well, we've not addressed the issue of predictability, specifically as you've just described it, in the sense of people knowing what they can expect to be done in the management of that land in the -- over the near term. The longer term, I believe that by virtue of establishing a plan, that that would enhance the predictability.

Right now, the management of that land is essentially determined by whether each of however many adjacent property owners chooses to get a cutting permit or not. So I think if you are living next to the land, then you would have a greater predictability about what it would be like overall if we had a plan in place that the Town is managing.

Q. Okay. So as I understand it, now the homeowner in the land adjacent to the accreted land has the ability to decide whether to cut -- or submit an application for permission to cut vegetation in front of their home or allow it to grow up.

A. Correct.

Q. And the current management plan would take that decision from the property owner adjacent to the accreted land and place the decision how to manage it with Town Council.

A. He would place it in the hands of the Town, which is the owner of that property.

Q. And the people who control that are Town Council.

A. Yes.

Q. So as things stand now, a property owner who's got accreted land in front of them can make the determination whether he or she wants to enjoy vegetation or trim the vegetation to 5 feet, in accordance with ordinances.

A. Uh-huh.

Q. Is that fair?

A. Yes.

Q. Okay. Under a management plan, that decision will no longer be the adjacent homeowners', but that will be a decision made by Town Council.

A. The overall management of that land would be a decision made by Town Council. I certainly don't envision Town Council making a

decision about whether an individual -- a strip in front of one individual's land would be cut or not. In other words, it removes the planning from that one strip at a time to a much broader area. But it would be in Council's hands.

Q. But the decision whether vegetation in front of a given house adjacent to the accreted land will -- will rest solely in the hands of Town Council.

A. To the extent that Council is making the decision about the growth or management of land in that specific area of the island.

Q. If it's not Town Council, who else would it be?

A. No. It would be Town Council.

Q. All right. So my statement is accurate?

A. Essentially.

Q. Is there something about my statement that is not accurate?

A. Well, I'm just a little confused. Because I don't want my answer to be construed as saying that Council is going to make individual decisions about the strips which are now being cut by individual landowners. They would be making a

decision about that whole sweep of land.
Q. Okay. The -- the 90 acres or so of accreted land that is north of the -- or east of the lighthouse, are you familiar with that area?
A. Okay. Toward the Isle of Palms?
Q. Correct.
A. Okay.
Q. Moving up the beach.
A. Right.
Q. In that area, if you just take that as -- as one area, the management plan will look at that as a single area to manage; and then, therein, the decision will be made for the whole area.
A. Yeah. And I'm not sure that that's the exact cutoff that's been used.
Q. Fair enough.
A. But yeah. Right now, we were given a plan that basically divided that land into, I think, four units.
Q. The --
A. All of the land into four units. We agreed on that.
Q. But the net effect is that the Town will be managing the accreted land adjacent to each of those property owners --

A. That's correct.
Q. -- in that area.
A. That's correct.
Q. So whereas before this land management plan is introduced -- and presuming it's passed -- those homeowners retain the right to make a decision about whether to enjoy the views and breezes under ordinances; and now, that decision will rest with Town Council.
A. They were given the legal authority -- not the legal authority -- they were given the privilege of being able to get a permit to cut in front of their house.
Q. Do you think that the access to ocean view is a right or a privilege?
A. I don't know anything about the law on this, but I personally think it's -- if anything, it's a privilege.
Q. Was that a privilege that was contemplated in connection with the transfer of the property in 1991?
A. I wasn't involved in that process. I can't tell you what was contemplated.
Q. How do you make a determination of -- of how to act if you don't know what was

contemplated in '91 by the Town, as you are moving forward with managing the accreted land?
A. Well, I can read the document.
Q. Fair enough. So then as you read the document, is the ocean view contemplated in the deed? In the restrictive covenants contained in the deed?
A. The ocean view people -- adjacent property owners specifically?
Q. Yeah.
A. I don't think it's mentioned specifically.
Q. What about --
A. There's a mention of ocean views generally, but it doesn't say whose view.
Q. Okay. A little while ago, we were talking about your visiting Mr. McCutchen's house. And you told me about that. And you said you had gone to maybe two or three other properties on the island.
A. Uh-huh.
Q. Do you recall which properties you were on?
A. The one I remember was Alice Paylor and Kit Regnery's.

Q. Okay.
A. That's on Atlantic, by Station 18.
Q. Uh-huh. And did you go on their porch or just on the grounds?
A. They spent most of the time wanting to show what things were like on the ground. I was on the second level. I frankly don't remember looking out from there.
Q. Did you -- and I think you just answered this question. Do you have any recollection as you sit here today of what type of view, if any, they enjoy from the various levels of their house?
A. Well, I think they -- they've cut with some regularity. So they should have -- I would expect they would have a view of the ocean.
Q. Do you have a specific recollection as you sit here today whether when you were there, that you could see the ocean or not?
A. I don't remember.
Q. Other than that house and Mr. McCutchen's house, any other homes you remember going to look at the effect of the growth of the vegetation on the accreted land?
A. Those are the only two I remember being

invited to visit for that purpose. And I -- I was a little vague in my answer, because I just thought there was a chance in all these years I may have been in one or more other houses. I have been in the Sand Dunes Club, but I don't remember what the views were like from there.

Q. Is it significant to you as a Council member and a chairman of the real estate committee for a homeowner or a property owner of Sullivan's Island to have their view of the -- from their house dramatically hindered by vegetation?

A. I think it's significant to the property owner who's been in that -- who -- if you're in a residence long enough for that to change dramatically. If it's changing dramatically, it's over a long period of time. That's one of the things that we consider in trying to -- evaluating this land. But that's -- I mean, there's a lot of other important issues that affect everybody on the island.

Q. Will property taxes and the Town's revenue stream be considered with regard to the management of the accreted land?

A. I think there's been enough discussion that they -- raised by several folks in this room

and elsewhere that it will be discussed by Council. I can't state how much of a factor those possible scenarios would be.

Q. And will that discussion take place -- is that an open discussion? Or is that an executive --

A. It's obviously open.

Q. Open? Did you contact Mr. Kana and instruct him not to consider how the management or use of the accreted land could affect real estate values on the front beach or other properties on Sullivan's Island?

A. No. There was a great discussion about that when his team brought to us their earlier draft. And they had sort of a matrix set up with different management options and different factors on how those might be impacted. And they had included as one of the numerous factors that they were looking at the issue of property values.

There was a great deal of discussion among Council as to whether that was appropriate or not for them to be including it. The -- to my knowledge, the RFQ did not include a lot of -- neither the RFQ nor the contract included that in the scope of services. The team was not selected

because of any expertise in that area or experience in that area.

And so there were a number of -- several of us on Council thought it was not appropriate at that stage to have put that into the matrix for the public to evaluate options because we didn't have information. We had information about what kind of species of birds were likely to inhabit what type of habitat, for example, but not that.

Other members of Council thought it should be included. And there was a lot of back and forth. The decision, as far as I recall, was finally that Andy Benke would tell Mr. Kana that -- about the concern about that on the parts of some of us and that if he were going to keep that in his presentation, that they needed to be able to justify anything that they said.

And as I recall he had communicated to Andy that they had decided not to go ahead with that, they were going to remove that. Again, this was after a discussion by everybody on Council. And it was based on the fact that that was not an element of this project that we had ever contracted for.

Q. Was there ever a motion made by the Town Council related to what to instruct them, Tim Kana and his group?

A. Well, that was the decision that I just described, which was that the Town administrator would contact Kana and tell him that we didn't think -- that there was a disagreement as to whether that should be part of the presentation. And if he were not willing and able to document whatever he said that, you know, he should probably not include it.

Q. Was there a motion made in session with regards to what information should be contained on the questionnaire that Tim Kana had presented?

A. There was a discussion in open session about that. The decision -- and I don't know that a vote was taken, because I'm not sure that it required one -- this was just simply an informal way -- or not an informal way, but one means of facilitating public input, one of a number of means of getting public input and reactions to their presentation.

And as I recall, the decision of Council was that the survey that was to be used for people to evaluate the different options would

include only the elements that he was going to include in his presentation. Therefore, if he was not going to include property values, the questionnaire would not -- or the survey form, whatever you want to call it, would not include property values.

Q. So was there a motion, or not?

A. I don't recall.

Q. Did you specifically tell Mr. Kana not to consider property value?

A. Did I personally tell him? No.

Q. Did you somehow non-personally tell him?

A. No. The communication -- the only communication with him that I'm aware of was what I just described from the -- by the Town administrator, based on Council's direction to him.

Q. Explain to me again, if you would, why the opinions of the voters about property values would not be significant for purposes of taking this opinion poll?

A. It was not an opinion poll. And if I indicated that, I apologize.

Q. Or a decision matrix. Is that what you said?

A. It was a matrix to evaluate. And, you know, here's Option A, how do you think it would affect wildlife? How do you think it would affect this? How do you think it would affect whatever. And then on further, Options B, C, and D -- or 1, 2, 3, and 4.

Remember, this was used to facilitate getting public reactions to a draft plan presented at one meeting, which was part of this process. And we chose to focus public input on the elements that were being presented to them at that meeting. We wanted to -- were trying to find out what did they think about what had been presented at the meeting.

Q. Why would you not elicit their opinions about property values to determine whether that was a significant factor from the constituents that Town Council needed to investigate before moving forward on accreted land management?

A. Because that was not at issue at that meeting. As I said, we were there to have them present their rough draft of some general management approaches. They were going to present that what they saw, they the consultants, as the impact on specific factors. And we wanted, in

particular, to get public input on what they thought about those options and their impact on those factors.

Q. So let me get this straight. They -- Mr. Kana sent you a draft decision matrix? Not you, but the Town Council?

A. He presented it to Council.

Q. And how would he have done that? Would that have been in session or just prior to session?

A. In session. I think he had handouts. I can't -- he might have done PowerPoint. He might have had hard copies.

Q. And when was the discussion related to the form of the matrix discussed?

A. I believe it was at that meeting and probably including after he left, but I can't -- I couldn't even tell you the month. I'm not sure I can tell you the year.

Q. And the Town Council was undecided one way or the other about whether to include it? There was a disagreement amongst Council?

A. There was.

Q. And so the Town administrator communicated to the consultant that if he couldn't support the property value analysis, that it should

not be included?

A. The decision of Council was to instruct the Town administrator to tell him that.

Q. Is there -- is that referenced in the minutes of the meeting, the instruction to the administrator?

A. I -- I don't recall.

Q. How would that normally be memorialized?

A. It depends -- I don't know. I don't know that it would be included in the minutes or not. It would certainly be on tape.

Q. Would all of the discussion related to the opinion matrix be on tape?

A. I would imagine so.

Q. Well, if you are not going to solicit the opinions of the constituents in your initial opinion matrix about property values, when do you do it?

A. We'll be submitting to the constituents what we think is the next and hopefully near last iteration of the plan. And we'll be soliciting reactions. And I'm sure we'll get a lot of input about property values at that time, as we will about other things.

Q. You recognize that people pay premiums for ocean front homes?
A. I do.
Q. You recognize people pay premiums for marshfront homes?
A. Uh-huh.
Q. Is that a yes?
A. Yes. Sorry.
Q. And likewise, there's a premium paid for ocean view or marsh view?
A. Yes.
Q. Knowing that there's a premium for that and if that view is taken away, how can you not acknowledge there being some economic impact to a property owner?
A. As I've said earlier, I see whatever change in view is going to occur as something that occurs on a different scale, on a long scale of time.
Q. For a home --
A. And again, there's a distinction in my mind -- maybe it's wrong, but -- between an absolute drop in property values, where something goes to a smaller number than it was, versus a difference in the rate of appreciation between what

happens and what one might have hoped or expected. But that's looking at a level of appreciation.
Q. Well, in comparing apples and apples, I mean, it -- we talk about appreciation, the County does assessments. Right?
A. Uh-huh.
Q. Is that yes?
A. Yes.
Q. And the purpose of those assessments is to affix some value for tax purposes for the County.
A. Yes.
Q. Do you believe that the decision by the assessor about a downward adjustment in the value of a house for tax purposes would be an absolute loss in value?
A. Only if the starting point in that change is the value that was actually paid for the property.
Q. Well, is this concept --
A. If you -- if you're -- you know, if you bought your property for "X" and it's now 10 or 15 years later and it winds up on the county tax rolls as worth "2X" and then you say, well, I disagree with that assessment and I think it should

be less, I think it should be 1.7 less, I'm sure they deal with those cases all the time. But that's not a drop in absolute value. That's a change in the level of increase to an appraised valuation by the county assessor.
Q. Is this concept of absolute property value, is this something unique to Mr. O'Neil? Or is this something that is a -- a view that you have heard espoused at other places and you're explaining it to me?
A. It's my under -- it's my personal interpretation of what I read about property values or the value of anything else. I mean, you have to have some basis in reality for something.
Q. And what is the basis in reality not to consider economic impact in making the decision?
A. I don't know that anybody said that that would never be -- or not -- would not be considered. It's not been a major factor in my personal decision making to this point in those stages of the process that we've gone through.
Q. And so I understand the stages, where are we in the stage? Or are you?
A. We have the final draft -- or the final recommendation from the consultants, and Council is

reviewing that. And we are supposed to be compiling our comments on the management plans for each of the different units so that they can be compiled by the Town administrator. And then we'll focus on that at another Town meeting -- another Town Council meeting, hopefully our committee meeting in January.
Q. And then when is the plan put up for vote?
A. Vote by Council?
Q. Yes.
A. As soon as we're at a point where we have discussed it to the point where we think we've got something that we believe is a -- an appropriate plan. We're not on a deadline, if that's -- we haven't set a date where we -- a date certain by which we will have an up or down vote.
Q. Sure.
A. We're trying to work through this on a more of a collaborative discussion, all of it open and more of a collaborative discussion, to see if we can arrive at a plan that Council in general approves of what we think is best for the land and the Town.
Q. As far as the stages in the process

where you are, is there another or multiple opportunities for public input?

A. We will certainly be collecting public input. I don't know what the medium will be for that, but we get public input on just everything on Town Council. And this is certainly no exception.

Q. Well, what about a formal meeting where things like property values and economic impact will be discussed with the constituents?

A. I could see us having another open meeting to present the main features of the final plan that we think we want to adopt. And at that time, people who are interested in discussing economic impact or presumed economic impact can certainly do so.

Q. You've got a -- no, you don't.

MR. JAMES HOOD: Can he get a stack of those records?

BY MR. JAMES HOOD:

Q. Give you a stack of records. And I think your lawyers have one too, somewhere.

MR. VAN RAALTE: We don't have one.

BY MR. JAMES HOOD:

Q. Those are the records that you had a chance to look at during the break. Have you had

adequate time to, you know, review those and talk to your lawyers about any questions you had about them?

A. Generally, right. If you have a specific question, I would like to be able to read it --

Q. Absolutely.

A. -- in a little more detail.

Q. Yeah. If you look at the bottom in the corner, there's a number. And if I'm not mistaken, these are supposed to be in ascending order.

A. Okay.

Q. And I'll just reference those numbers. And I'll mark collectively what we're going through, things that --

(O'NEIL EXH. 1, Multiple E-mails, were marked for identification.)

THE WITNESS: Now, is this interfering with your microphone?

BY MR. JAMES HOOD:

Q. If you would, look at Page 9403.

A. Okay.

Q. This is an e-mail dated April 22nd, 2009 that was sent by Mary Watson to, it looks like, all the members of Town Council and Town

administration. Do you see that?

A. I do.

Q. All right. Is this what we were talking about earlier, the revisions to the land management plan to not include the sections on property values?

A. It's the same issue, right.

Q. Is this about the time where this came up for the first instance? Do you remember?

A. I think it is. I don't remember when we were looking at these, just now. I don't recall whether this was maybe after receiving some written or electronic draft from Dr. Kana and before we met with him or if it was a follow-up to our meeting with him.

Q. Here. That's their copy.

A. I don't remember the dates. Wednesday, April the 22nd, would have been the day after our regular Town Council meeting. It may have been right after.

Q. Now what I want to ask you about is this is -- looks to be an e-mail sent to Council, mayor, Town attorney, talking about the land management plan. And are these discussions like we're seeing at Page 9403 of Exhibit 1, are these

discussions recorded through Town in some fashion?

A. Other than the -- well I mean, the Town administrator, I guess, was copied on all of these.

Q. And as far as, you know, the business of Town Council, I mean, it appears that Ms. Watson is communicating to Andy and copying everyone about revisions made to -- to the section?

A. Uh-huh.

Q. And is that customary for Council to make determinations like that and discussions like that via e-mail?

A. We tend to be more careful currently about anything which might in any way be construed as sort of deciding electronically. This, you have to remember, was simply some back and forth about the agenda, basically, for an open meeting in which something would be presented. This was not a back and forth about deciding on a plan or a contract or anything else.

Q. Did -- did the Town Council decide that they wanted to include a section on property values and to look into finding a better qualified person to do that?

A. I -- I don't recall that. No. My recollection is not that we decided we wanted it,

we just wanted somebody else to do it. My recollection is that we decided to have Andy tell Dr. Kana that if he was going to -- if there was disagreement and if he were going to include it, that he had best be willing and able to back it up.

Q. When you say the pronoun "we," who was included in the we?

A. Council.

Q. Look at Page 9404 --

A. Uh-huh.

Q. -- which is the next page in Exhibit 1. And this was a -- looks like a response to that message from Mary Jane. Have you had a chance to read that?

A. Yes.

Q. And who is Jerry?

A. A Council member, Jerry Kaynard, at the e-mail address racketspe.

Q. Okay. It says there: Council discussed this at the presentation and decided to leave the report as presented.

A. Uh-huh.

Q. Is that the section on property values?

A. Given that he's responding to Mary Jane's e-mail below, which you noted on the

previous page, I would assume that it is.

Q. And according to 9404, Mr. Kaynard's reference is that Council discussed this at the presentation and decided to leave the report as presented.

A. That's what he says here. I don't remember -- as I told you, my recollection was that we had arrived at a different conclusion. And I thought it was at the same meeting. I have a dim recollection of -- from reading this, two-and-a-half years ago, of thinking I don't think that's what we decided. But that's two-and-a-half years ago, and that is my recollection.

But he was referring to the discussion. As I had said, I thought that the night before that would have been a Council meeting. And that's, I believe, the meeting that he's referring to.

Q. Okay. Then he goes on to say: I do not think Council should make value judgments and edit a consultant's report in this manner.

A. I see that.

Q. Do you agree with that?

A. I think Council is the group that contracted for the report and the type of product that we wanted. And if it did -- did not include

elements that we thought it should or if it included elements that we thought it should not, I think it's our responsibility as the client to indicate that to the consultant.

Q. What's the downside?

A. To what?

Q. Including this section that was already presented in their report.

A. Well, the downside is that, as I told you, we did not ask them for that, we did not necessarily think that they were qualified. And it introduces a lot of discussion about something on which we didn't have good information, and they were not qualified, in my view, to speak. We didn't ask them about a lot of things that were not in the report -- that were not in the contract.

Q. The next sentence, the third sentence of that, says: We hired a consultant for his opinion as an expert. And, remember, he and his firms are the experts.

A. I see that.

Q. Okay. Do you agree with that?

A. I agree that we hired them for their expertise in their particular areas of professional practice, which did not include property values.

Q. Okay. The second sentence is only six words. The next sentence says: If his report generates discussion of this and other issues, all the better.

Do you understand "this" in that sentence to be property values?

A. I guess so.

Q. Do you agree that if it generates discussion of property values and other issues, all the better?

A. Not necessarily. Because it could distract focus from the main elements of the report that we paid for. This is a very -- as you have observed, a very, very contentious issue. And we've been trying to elicit great public participation and incorporate that into a very rational, logical, sound process.

Q. And I'm -- what I'm really trying to figure out is why some members of Council, or at least a member of Council, would think discussions of all the issues, including property values, should be encouraged and other members think that should not be addressed.

A. Well, recall that the -- this -- the back-and-forth is about a specific draft of a

report to be presented at a meeting. It is not concerning whether anything else should be considered in the overall, final decisions about the plan. This is about presentation of a draft report at a Town meeting.

Q. But to me as an outsider, as a casual observer looking at these documents, it -- it seems to me that the information being disseminated to the public is being controlled by the Town Council.

A. I don't agree with that characterization of it.

Q. Okay. Why would not discussing economic issues not be controlling what is discussed?

A. I think you -- didn't you say controlling the information?

Q. Yeah.

A. Okay. Well, then now you are saying controlling the discussion. Those are two different things.

Q. Okay. Let me back up.

Why would controlling the discussions about economics, why would that not be controlling the entire process?

A. It's controlling the agenda of a

particular meeting. And you have to do that if you are going to have an effective meeting with upwards of 100 people potentially attending and trying to get some meaningful input from people.

Q. But if you know that it's a contentious issue and one that the consultant has raised, albeit on his own, why would it not be better to have an open, full discussion amongst the constituents so that the --

A. I think we had to -- we had to make decisions about what was to be covered in that meeting. And that was within our purview to do so, and we did it.

Q. Okay. Mr. Kaynard describes there, he says: I'm strongly opposed to editing the consultant's report.

A. Uh-huh.

Q. Do you feel that removing the portion or instructing that they can't support the property values constitutes editing the consultant's report?

A. In the sense that we might be directing him to provide material in the report of areas that we want, if that -- to the extent that that's editing, yes. If you're using editing to mean to somehow sway or color the information that he

provides us on matters about which we contracted him to provide us that information, then no. That's not editing in that way.

Q. Well, he wasn't going to charge you any extra for including the property values, was he?

A. I have no idea. I don't know that he did anything for free, but --

Q. I mean, it was a fixed contract, wasn't it?

A. Well, you have e-mails in here that include some back-and-forth about additional costs, I believe. So you'll see that fixed contracts, as you know, are not always completely fixed.

Q. So what was the answer to my question? Was it a fixed contract?

A. Yes. Which later was modified.

Q. Okay.

A. And if you are only paying a set amount of money, he's only devoting a set amount of time to it. So it comes out of something.

Q. Where it says, full participation of all residents in this discussion will occur at the public hearing, do you have any disagreement with that?

A. I don't know what "this" means, but

full -- I would -- I completely agree that we encouraged full participation at the meeting.

Q. Okay. But in the discussion --

A. Meaning participation by all the residents there.

Q. Okay. And would -- I think the hang-up there was the term "in this discussion" --

A. Right.

Q. -- meaning the property values discussion.

A. Right.

Q. How were you able to encourage full participation if the opinions of the constituents are not taken into consideration in that opinion matrix when you have the next meeting?

A. Because we were trying to elicit feedback on specific elements of the plan, not everything -- not everything under the sun.

Q. Other than property values, what else was excluded or focused to a laser beam, this discussion of the issues related to the management of the accreted land?

A. I don't even remember the elements now that were in that matrix, but I know you have got copies of it.

Q. Was anything other than the property values removed?

A. I don't believe that anything else was removed. I think there may have been some combining of categories, but I don't remember.

Q. Was it considered to be a detraction from what was being focused on by going into economics?

A. You could say that, in my mind.

Q. Okay. And then the next sentence says: I do not think editing of a consultant's report on a matter of substance is appropriate via e-mail.

Do you have any disagreement with that?

A. Probably not, looking at it in retrospect.

Q. Does this help shed any light on the circumstances surrounding the decision whether to keep the property values issue in the report? You know, you mentioned that it was some time ago. And as you go through these -- this e-mail, for example, does this help place in your mind's eye when and how the discussions took place?

A. The nature of them, it does, and the issues. And I don't think I could have told you very closely about the month and year.

Q. Let's look at the next page, which is 90405 (sic) of Exhibit 1. Who is Buddy Howle?

A. He's a member of Council.

Q. Does this appear to be an e-mail that Mr. Howle sent in response to -- well, let me back up.

Looking down at the bottom of that page, it looks to be that Ms. -- that same e-mail from Mary Jane.

A. Right.

Q. And then above that looks to be a response from Everett Presson.

A. Correct.

Q. At that time, he was a member of Town Council?

A. Correct.

Q. He says: I don't think the value part ought to come out. While certainly not the most important part of the plan, what we'll be making our decision or whatever we do out there will have an effect on property values.

Do you agree with that?

A. Not necessarily. I don't necessarily disagree with it.

Q. What does that mean?

A. Just what I said, I neither agree nor disagree with it.

Q. Depends on what is is?

A. Yep.

Q. Each person on the Council is smart enough to take the information and if they think the information is not relevant then discard it in your mind.

Do you disagree or agree with that?

A. In terms of Council's intellectual capacity, I think that's reasonable.

Q. All right.

A. Generous, but reasonable.

Q. Okay. Next sentence: We paid for it, I want it.

A. What -- is there a question there?

Q. Yeah. Do you agree with that?

A. No.

Q. What I'm trying to figure out though, is this talking about the opinion matrix? Or was there an actual plan that actually had some section devoted to property values?

A. I'm getting a little more puzzled, the more you ask me about it, because it's making me think about it.

Q. Yeah.

A. I believe the discussion came up because of the public meeting that was being planned -- okay? -- at which the highlights of their draft report would be presented. Now, they had, I believe -- I could be wrong -- I think they had given us a report to that point, which included their matrix which included the property value issue.

I don't believe we were intending to say take it out of the report so much as I believe we were saying either do or don't leave it in your presentation. And if -- whatever you do about leaving it in or taking it out of the presentation, that will drive what we ask about on the survey or the questionnaire or the feedback form.

So it's kind of three different things, I believe. And you know, obviously if we thought that it was inappropriate to have it in the report, then we would expect that the next edition of that report would address our concerns. But the -- the issue that you raised earlier of, you know, of the editing a report, my belief was that in that back-and-forth, I don't think we were intending to modify the draft we had already received. I

thought the emphasis was on what was going to happen in those two hours, or whoever long, at Holy Cross Church.

Q. Well, and that's why I was asking, because I was sort of confused. It sounded like there was some concern -- and correct me where necessary -- but it sounds like there was some concern that the consultants were going in the economic realm and y'all didn't want them to take your paid-for time to do that, and they're not qualified to do it --

A. Uh-huh.

Q. -- so let's strike that, focus you on these issues.

A. Right.

Q. But from reading this correspondence, it makes it sound as though there is a section contained in a report that is already completed that is dealing with property values.

A. I don't know that there was a full section on that. I would have to go back and look at the report. They had their -- in their draft report, they had a draft matrix which included property values. And they were going to use that to focus the discussion at the public meeting. And

I believe that's what all the discussion was about.

Q. And I guess we could go back through the -- the documents from Coastal Science and figure out when they gave you a draft report and --

A. Yeah.

Q. -- if it was discussed.

A. Yeah. I just -- I'm sorry. I don't have that information.

Q. Fair enough.

And then it says -- we said the sentence: I paid for it, I want it. Why are we as a Council deciding what should or should not be included in an expert's report?

A. Uh-huh.

Q. Did you agree or disagree with that?

A. I disagreed with that, because we were buying it and we should decide what's in it.

Q. Okay.

A. And I'm told by people that frequently have engaged consultants in other areas that there's always a concern with what is called scope creep, where you retain consultants to do one thing and then they wind up kind of wanting to do this over here instead of what you hired them for. So apparently it's not an unknown phenomenon.

Q. The next-to-the-last sentence says: By the way, this is not a big issue for me. Final sentence: I think we will get into more trouble for monkeying with the report than by leaving the info in.

A. Uh-huh.

Q. Do you know what he was talking about in "monkeying with the report?"

A. I presume whether or not to include the references to property values. But again, at this point, I'm not clear on whether the discussion was about the report, per se, or the presentation of it at the Town meeting.

Q. Do you have any recollection, as you sit here and see this e-mail that you got back in April '09, what type of trouble was being referenced?

A. No. You would have to ask Mr. Presson.

Q. Okay. And then above that, in that sort of chain of e-mails, it looks like that was an e-mail from Buddy Howle.

A. Right.

Q. Did you agree with his sentiments expressed in his e-mail, on 9405 of Exhibit 1?

A. I didn't agree with his conclusion. As

I said, I didn't think it should be included in the presentation at that meeting.

Q. Is that conclusion, being what is critical at the beginning --

A. The conclusion being to leave in the discussion at the meeting.

Q. Okay. Have you seen the Summons and Complaint that were filed in this case?

A. I did, awhile back.

Q. One of the documents attached as an exhibit to the First Amended Complaint was an enclosure letter, date of February 3, 2009.

A. I'm sorry. Say the date begin.

Q. Yeah. February 3, 2009. I'll hand it to your lawyers and let them take a look at it. I don't think it's in that stack that you have. I'll hand you this copy, and you can look at it while they're looking at it.

(Off-the-record discussion.)

MR. HAIR: Are we going to break for lunch? I mean, you want to ask him about these, and it's not something that he has reviewed.

MR. JAMES HOOD: Sure. Yeah -- no. I mean, it wasn't produced prior to deposition. He's entitled to talk to you about it. And let me get

the draft report too because -- the other enclosure for that.

MR. HAIR: Okay.

MR. JAMES HOOD: Yeah, we can break now.

MR. HAIR: Yeah, we can take a look at it then. I mean, it's obviously an exhibit to the Complaint, and I have got it. So --

MR. JAMES HOOD: Okay.

THE WITNESS: Do you need yours back?

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. The decision to remove the portion of the draft report dealing with property values, was that a decision unilaterally made by you?

A. Of course not.

MR. JAMES HOOD: We're going to take a break now. You have got a -- I'm going to hand your lawyers some other documents I think we're going to use as exhibits. Under our rules, you are allowed to talk to them about the exhibits. You are not allowed to talk to them about your other testimony.

THE WITNESS: Uh-huh.

MR. JAMES HOOD: Do you understand

that?

THE WITNESS: Uh-huh.

MR. JAMES HOOD: Is that yes?

THE WITNESS: Yes.

MR. JAMES HOOD: Thanks.

THE VIDEOGRAPHER: We'll now go off the record. The time is approximately 1:24 p.m.

(A luncheon recess transpired.)

(O'NEIL EXH. 2, 2/3/2009, Coastal Science & Engineering/Benke Letter, was marked for identification.)

THE VIDEOGRAPHER: We're now back on the record. The time is approximately 2:33 p.m.

BY MR. JAMES HOOD:

Q. Mr. O'Neil, right before we took a break, there was a piece of paper I handed to you. It was -- I'll hand it back to you. I marked it as Exhibit 2.

BY MR. JAMES HOOD:

Q. And that was Exhibit 15 to the First Amended Complaint that was filed in the case and an enclosure letter from Coastal Science & Engineering.

Did you have a chance to look at this and the enclosures that came with the letter --

with the letter, during the lunch break?

A. I did have a chance to just briefly review the draft report.

Q. Did -- were you able to clarify what we were -- that sort of confusion we had earlier about what changes, if any, were made relative to property values in the e-mails that we had gone through?

A. Well, I mostly -- comparing these two things here (indicating). And I think that's from the report that you are talking about.

Q. Okay.

A. And again, you know, there was some confusion about to what extent the discussion actually referred to changes in the report, per se, versus changes in the proposed agenda for this public meeting and in the survey or feedback form. And I've looked at these two iterations of it, of the feedback form.

Q. Okay. And the second document you are looking at, I'll mark as Exhibit 3. That's Exhibit 17 to the First Amended Complaint?

A. Yes.

MR. JAMES HOOD: All right. So we'll mark that as Number 3.

(O'NEIL EXH. 3, Management Plan Element Rating Form, was marked for identification.)

BY MR. JAMES HOOD:

Q. All right. So is this the change that was being referenced in these e-mails?

A. The one that is your Exhibit 17 is the later version of the two.

Q. Okay.

A. And it does incorporate the changes that we had discussed, that came out of the discussion among Council members.

Q. All right. I'm going hand you the one that I marked as -- as Exhibit 3.

A. Uh-huh.

Q. And tell me -- it looks like another change was made to include ocean views, in conjunction with several other items.

A. Uh-huh.

Q. Can you tell me what those items are?

A. It says: Views, beach access, and public safety.

Q. And was there any discussion why ocean views and beach access and public safety would be, you know, considered as one when the prior draft had had them broken out as two different items?

A. I don't remember exactly how that came about.
Q. Any other --
A. But I mean, the first one that we saw was a draft that was presented to Council for their feedback.
Q. The disadvantage of taking a break is I've got lots of notes.
We were talking about, at the very beginning of this deposition, you made a reference to enhancing resources. Do you recall discussing of the overall goal of enhancing resources? Do you remember that?
A. More or less, yeah.
Q. When you say --
A. In terms of enhancing the -- the -- the accreted land as a natural resource.
Q. Okay. When you say that, enhancing the accreted land as a natural resource, what does that mean?
A. As I think I explained it this morning -- I hope I'll be consistent with that if I did -- but I think of it as increase in the health and diversity of the life in that area, the vegetation, animal life.

Q. All right. And then when you were talking about the -- you mentioned wildlife and environmental value --
A. Uh-huh.
Q. -- in that same thread of discussion that we had. What type of wildlife were you referring to?
A. Well, there's any number of species of birds, both those that are here year-round as well as migratory birds, for example.
Q. Okay. And how does the development of a maritime forest enhance wildlife, in your estimation?
A. Well, if you assume that as part of the land is developing into a maritime forest, you still have the existing ecosystems from the accretion of the land, then you have got a greater diversity of habitat. And what the environmental people tell us is that the more diversity of habitat you have got, the more diversity of wildlife you have got.
Q. I think at one juncture, we were -- you were explaining to me that there's a sort of continuum of the development of maritime forests. And so over time, it will change. And I was asking

you about property values and things of that nature. And I think that we sort of got offtrack talking about, well, what are you talking about, because a maritime forest is a developing natural event.
A. Uh-huh. It's one stage in a process of development of newer, ocean front land.
Q. Okay. In context of the vegetation that is currently in the accreted land, would you agree that if left uncut or trimmed, it's going to get taller and thicker?
A. Not necessarily. The land that's -- what we are told by our consultants is that where there has been myrtles that have been trimmed, that they tend to hedge. They tend to get much bushier lower down. Whereas if you look at myrtles that are allowed to grow, they are not nearly so dense lower. They get taller, but they are not as thick. So I guess you get one or the other. I don't know.
Q. I gotcha. So then if left, you know, untrimmed or unmanaged, that at least the myrtles would at least grow taller.
A. They would grow taller. And what the consultants have told us is that the repeated trimming, topping off of the myrtles in places

where that's occurred, has really contributed to a very dense understory, which actually is more favorable for harboring some undesirable types of wildlife, such as rats.
Q. Is there something -- well, to the extent that a homeowner is adjacent to vegetation and that vegetation is obstructing their view, you would agree that the taller it grows, the more obstructed their view becomes?
A. It depends on how thick it is at the tallest part that is above their -- in their line of vision.
Q. Do you contend the current status ^ dict ^ of the maritime forest adds value to the properties adjacent to that?
A. I don't know whether it adds value to the properties adjacent to it or not. I think it adds value to that entire property of the accreted land and to the Town, as a whole.
Q. And how do you make that statement?
A. Well, what we were just talking about with adding to the diversity of the habitats and the diversity of the environment there.
Q. Okay. What about --
A. And it also is considered by many

people to be a section of the island that is very desirable; that many people enjoy walking through it and, you know, checking out the birds and everything else in the part that's more mature.

Q. The value portion, is -- is there a way to -- are you distinguishing value from an ecological standpoint as opposed to an economic standpoint?

A. I'm talking of it overall.

Q. Was there any --

A. But I mean, I'm more focusing on the ecological aspects of it.

Q. Okay. Well, let me ask it this way --

A. I mean, if we were only interested in monetary value, that earlier Council might have decided not to put it under protection.

Q. Do you contend the current status of the maritime forest adds economic value to the adjacent property owners?

A. I cannot answer that.

Q. And why not?

A. I don't have that information.

Q. All right. I have got in front of you, marked as Exhibit Number 1, that stack of -- paper-clipped stack of documents. And we're going

to go back to a few more of those documents here. If you would, look at Numbers 10521 and 10522.

A. Okay. E-mail from Andy Benke entitled Charleston County Assessor?

Q. Yeah. Does this appear to be an e-mail Andy sent to you, dated February 6, 2007?

A. Uh-huh.

Q. That's a yes?

A. Yes. Sorry. I keep forgetting.

Q. That's all right.

Do you recall the dialogue that you had with Mr. Benke regarding the tax assessor's office methodology for calculating the taxes on front beach property?

A. In the most general of senses. I know that he and I have talked about it on several occasions before when the issue has been raised.

Q. Okay. In what context was the issue raised?

A. The accreted land and comments about the impact on property values of being on the land as it grows and develops, being adjacent to that land as it develops, and the issue of how beachfront property was appraised. I don't remember the specific conversation with him that

led to this.

Q. Do you recall the description of ocean front, ocean view, and ocean access properties?

A. From?

Q. From this correspondence.

A. Not until I saw it today, I didn't remember that.

Q. Okay. In the event that the vegetation in the front of the home were to increase to the point where the ocean was no longer visible, transforming the home from, say, ocean view to ocean access, does your understanding of the explanation that was communicated to you by Andy Benke confirm that there would be a decrease in the value of such property?

A. It sounds like there would be a decrease. There could be a potential decrease or a smaller increase in the value of -- as appraised by the County Assessor's office.

Q. And when you say smaller increase, that was the discussion we had earlier where if you buy a house for $40,000 30 years ago and it's worth $1.5 million now, you're not really calculating that as a loss as opposed to not as much of a gain as you would expect.

A. Correct.

Q. Well, if your house is classified as ocean access, which is a step down from ocean view or ocean front, and that had to do with the step down in the value of it, you just don't accept that as a definitive loss in value because it's appreciated overall?

A. In general, that's correct. I don't think the IRS would give you credit for a loss.

Q. What was the -- the reason for the inquiry into the methodology for taxation if the concern had to do with trimming of vegetation? I mean, what prompted you and Mr. Benke to -- to go this route?

A. I'm sure it was in response to comments about from certain people that not letting them cut the vegetation on the Town land in front of their houses would demean their property value. It would have been -- just brought up to us by people here and elsewhere, over the years. It was in response to somebody making a statement, I'm sure. I don't remember who it was or exactly the form it came up in.

Q. Was there any further discussion that you recall into the issue of the taxation of -- or

the assessment and valuation of properties on the front beach of Sullivan's Island?

A. At this -- I don't recall anything at that particular time. But that was, as you can tell, some time ago.

Q. In the event that the -- the growth of vegetation on accreted land changes ocean front homes to ocean view or to ocean access, like is described in that correspondence, and the county tax assessor's office values those properties at a lesser amount because they are no longer ocean front, do you think that that consideration is something that needs to be factored into whether to implement a management plan that could have that impact on Sullivan's Island?

A. I think obviously it's something we will consider. We've been hearing about it. But I also think we need to consider both the likelihood of there -- there being a true drop in property values and, again, the time frame. You know, traditionally the property values have been growing faster than the trees, by far.

Q. Would you look at the next page, it's 10553.

A. Uh-huh.

Q. This --

A. Excuse me. Yes.

Q. This looks to be -- in the middle there -- I don't think I have the back page attached -- tell me what you mean when you say: Speculation about the effects of future unknown vegetation growth on property values is outside the scope of the project and beyond the expertise of the consultants.

A. That's pretty clear what it means. I mean what it says. This was part of that back-and-forth about to what extent -- I believe this is that same date, isn't it? April 22nd?

Q. It is.

A. So that's part of that overall back-and-forth about whether it was appropriate to include property values as an element to be considered in the public meeting and on the feedback form.

Q. Okay. Well, what is the theoretical unsubstantiated content in the report that you are referring to there in the next sentence?

A. The claims by the consultants about the impacts of various management alternatives on property values.

Q. And in the last iteration of the -- the draft final report that we saw, was that information still contained in there?

A. The final draft?

Q. The -- I guess the -- whichever one --

A. I have to admit, I don't remember.

Q. I don't even know what date it is.

A. I know the copy that you are talking about. I don't recall -- if you're asking me whether it gets any mention at all in that document, I can't remember. That's a big document.

Q. Let me just show you. I'm not going to mark this as an exhibit, but I'll identify it. It's a second draft report done by Coastal Science & Engineering dated January of '09, entitled second draft. I just flipped through Alternative 3, which is on Page 157.

A. Uh-huh.

Q. And there's a section there titled property values.

A. I'm aware of that.

Q. Is that what y'all are discussing in these e-mails?

A. I think so. That's the January '09?

Q. Yeah.

A. I think so. That's the report which was going to be discussed at the meeting whenever it was held. But the meeting that we were talking about in April was the sort of opportunity for the public to have read this online and then to hear the consultants explain it, present it briefly, and then to comment on it.

Q. All right.

A. So it was there in that draft.

Q. And this is what the e-mails that we've been discussing, where they reference property values, that's what you recall?

A. That's what I recall them, the reference to. But not -- I mean, again, it was included in the report. I believe the discussion came up in the context of the meeting, about the report.

Q. Now, in those -- in this draft report that we looked at where it has a section on property values, what is it that gives you confidence in saying that that information is beyond the expertise of Coastal Science & Engineering?

A. Because when they sent us their qualifications, it did not include anything in

property evaluation.

Q. All right. And so, you know, when we first started talking about this, I think one of your concerns was scope creep; and if you were paying for the service, then you didn't want them not spending that time on the proper scope that you had determined.

A. Uh-huh.

Q. Is that right?

A. Correct.

Q. And as we now have the timeline a little clearer, it appears that that work was already done. Does it not?

A. Whatever work went into producing that report, it was already done.

Q. All right. Was there a separate discussion that was focused on the decision matrix that we talked about, which is Exhibit 2?

A. I believe that was all -- what all this discussion was about, or part of.

Q. Okay. You go on to say that -- it says: If citizens wish to discuss property values in the context of the accreted land management plan, that's fine.

And how would citizens go about

discussing property values if it's not going to be included in the plan that's presented to them through the Town Council?

A. Well again, that's part of -- you know, the plan from the consultants is not the final management plan. The -- the report from the consultants is their recommendation to Town Council about how to manage that land.

Q. Right.

A. That process of getting the consultants, retaining the consultants, having them go through these public meetings, eliciting citizen input, preparing several drafts of the report, what -- that's only part of the process.

Council then has to take their best advice, which hopefully would be on matters on which they have expertise, and use that as sort of best practices information and, at the same time, factor in all the other issues that come into governing, which are not all scientific. And that can include things like individuals who might have concerns about their -- the value of their property.

Q. Is there a way for the, as you reference there, the citizens to discuss this issue

in the context of the public debate if it's not -- if there's no consultant retained for that specific purpose?

A. Certainly. We have citizen input on a variety of things that we don't bring in consultants for.

Q. But how would you, as the Town Council, alleviate any concerns that the opinions are unsubstantiated if you don't get your own consultants to focus in and look at that?

A. Well, we do that all the time in governing. We hear citizen input. It doesn't mean that every time anybody raises any particular issue, we're obligated to go out and get a consultant to assess that.

Q. Well, as -- as part of the fiduciary obligation related to serving as the Town Council and making sure the property and the rights of your citizens over which you are governing are protected, you don't think it's necessary to have that consideration presented in the context of a consultant so that you're satisfied that they're qualified to discuss economic impacts and values?

A. I think economic impacts can be considered in a lot of different ways, and it plays

into different decisions to a different extent.

Q. Okay. It seems to me that one of the disagreements you have about this group, Coastal Science, rendering opinions about value is their qualifications.

A. And the fact that it was not requested.

Q. Anything else?

A. That's the only two I can think of now.

Q. All right. So it's not requested, and it's -- you are not sure they are qualified to do it.

A. Uh-huh.

Q. Right?

A. It's not requested because it wasn't part of what we were trying to accomplish.

Q. Okay. So but there are two reasons that you have a -- a beef with Coastal Science adding that -- or adding values into their report. And that is it wasn't what was requested of them and you think it's beyond the scope of their expertise.

A. Those are two, yeah.

Q. Any others?

A. That's all I can think of now.

Q. Now, one of the things that you

mentioned in here is that the discussion of it is theoretical and unsubstantiated.

A. The discussion of it by these consultants.

Q. Right. So how do you, as a Town Council, have those discussions that are substantiated and not just theoretical?

A. What I was referring to is what we were getting in the report that we had paid for.

Q. I understand -- I understand that. But how do you get someone to bring to the table the economic impact that is reasonable within their scope of expertise and is substantiated.

A. That's a matter for all of Council to decide, if we think it is such an issue and so much in doubt that we need to go outside to get some expert help.

Q. Has that been something that has been discussed or addressed in this process for the accreted land management plan?

A. Well, property values have been raised quite effectively by a number of people that you're familiar with at this point. So Council is well aware of it.

Q. But specifically, the issue of

retaining a consultant who is qualified to give nonspeculative and substantiated presentation to Council for consideration in making an accreted land management plan?

A. I'm sure if enough members of Council thought that was a clear and present danger, reduced property values were a clear and present danger from a specific plan we were considering, that Council would try to find some information, knowledge, and expertise.

Q. At this juncture, has that been done?

A. No.

Q. As you sit here today, are you aware of that scheduled to be done?

A. I'm not aware of it scheduled to be done. It would be a decision to be made by all of Council, obviously.

Q. Back on the same document there, 10553, the second sentence, you say: Unknown vegetation growth.

A. Uh-huh.

Q. What do you -- what do you mean by "unknown"? What's unknown?

A. The level of growth of vegetation.

Q. Is that not something that the

consultants were evaluating, the level of growth of the vegetation?

A. Well, in any given area, you can't say for certain what it's going to be. But they -- they were evaluating, obviously, how things would turn out physically.

Q. Is there some concern with you that you can't quantify vegetation growth generally?

A. No. But there are different areas of that accreted land where it's probably tougher to figure it out than other areas, the areas that have been pruned every year. I'm not sure how -- how and how quickly those bushes would grow, or whether anything else can grow through the thicket of them, or how long it would take. And you never know when there's another hurricane that's going to destroy a lot of it.

Q. If I could get you to flip to the next page which is the stack, 10560 --

A. I have it.

Q. -- it looks like a continuation of the -- that same dialogue. And I'm looking at the top e-mail. It looks like it's from Mike Perkis.

A. Uh-huh.

Q. He's a member of Town Council?

A. Yes.

Q. Do you know what he's referring to in Items 1 and 3? Is that referring to the RFQ?

A. Well, I'm reading down to the prior e-mail from Andy to Council --

Q. Right.

A. -- copying Council in response to Carl Smith, the mayor. He says nowhere in the RFQ of the contract -- one of us had requested him to clarify whether that was part of the contract or not. He says on Page 3 of the RFQ document: Item 4 sets forth the goals. There are three bulleted items broadly stated.

And he lists those. And what it looks like Mr. Perkis is saying is referencing Numbers 1 and 3 there and saying that those two could be construed as introducing or as including the issue of property values in things that should be considered in designing a plan.

Q. Do you know whether the issue of values was something that was submitted to Coastal Engineering? Or is that just something you don't remember as you sit here?

A. The latter.

Q. Okay. I don't -- at some point, I'll

see if we can find it.

On the decision matrix or the -- I guess that's similar to the questionnaire?

A. The -- yeah. I mean, I think of it as a feedback survey.

Q. Okay.

A. But it was designed to follow the matrices that he showed for the different four management options that were -- he presented on the table at that point.

Q. Okay. On that -- on that questionnaire itself, not on the report --

A. Okay.

Q. -- but -- but did you cause the portion of property values to be removed from that?

A. I think we covered earlier today that my recollection of the process by which that was removed -- and that was, as I said, I think the outcome of a Council debate about that -- was that Council instructed Andy Benke to tell Dr. Kana that if they were going to include it, they had to be able to substantiate it.

And the idea was that this was to, as much as possible, kind of parallel with the presentation he was going to -- the format of the

presentation he was going to follow. And what we had -- I think what we had decided at that meeting was he had to decide whether he was ready to back up anything that he said about property values. And if he was not, then we were not going to include property values on the feedback form because we were asking for feedback on what people had heard from the consultants that night at the meeting, the night of the Town -- the public meeting.

Q. Okay. The -- that meeting, January '09 second draft, was that handed out to Council at the meeting and made available to the public?

A. My recollection is we -- I guess he sent that to his -- it sounds like, if I remember the correct -- correctly from the letter, he referred to seven or eight copies. So I guess he sent us hard copies. I know that we had copies available for inspection at Town Hall.

I don't remember whether we posted an electronic copy up on the website or otherwise. It may have been -- what we've done on occasion with his stuff is, because the files are so big, we've provided links that he's provided us to, I think, an FTP site that he uses to -- so the public could

get to it.

Q. Okay. Well --

A. It was available for public review. I just don't remember all the different ways.

Q. So if the draft were available for public review and it contained in it the provision about property values --

A. Uh-huh.

Q. -- then why would it make sense to take off the reference to property values in the opinion survey if it's already been disseminated?

A. Because the survey was designed to get people's feedback on what they were going to be hearing at that meeting particularly. There's a lot of things in that document that were not included in the survey.

Q. When the decision to instruct Benke was made by the Council regarding the inclusion or deletion of property values in the opinion questionnaire, who were the three people who objected to doing that? You said it was divided, right?

A. It was. And I'm having to rely on the e-mails here. It seems that some number of -- Buddy Howle, Jerry Kaynard, and Everett Presson,

from their e-mails that you and I looked at earlier today, were in favor of retaining it.

Q. And then on the other side would have been?

A. Well, you saw e-mails from Mary Jane Watson and me and Mike Perkis. And I can't recall exactly what the mayor said.

Q. And I may have already asked you this. Was that discussion, did that take place at a Council meeting that -- you know, one of your regularly purported meetings?

A. It did. As you saw, there was also some follow-up commentary in e-mails.

Q. And what about the combination of ocean views in that questionnaire, when -- and granted, there's a lot of information that's been produced in the case. But as I have gone through it, I haven't seen any sort of discussion about the combination of those two elements from the draft to the --

A. I don't remember.

Q. Do you recall whether that was a decision that was discussed at the Council meeting that's recorded?

A. I don't recall one way or the other.

I'm sorry.

Q. And what about any instruction that was given to Benke about communicating Council's instruction in that regard to Coastal Science? Do you have any recollection of that?

A. No.

Q. When I saw the final draft of the report that was done by Coastal Science, which was generated I think in July 15th, 2010, have you seen that draft?

A. That's the final one, right?

Q. Yeah.

A. Yeah.

Q. All right.

A. I don't remember everything in it.

Q. And I'll just show you Page 155. I don't need to mark it as an exhibit. But it continues to have in there reference to property values.

A. Uh-huh. I see that.

Q. Okay. Why would the reference to property values continue to be included in the drafts if the discussion was that they weren't qualified to provide that information?

A. The discussion was -- and frankly I

couldn't have told you one way or the other whether this was still in here in the final draft. But as I mentioned, the discussion was primarily about what would be covered in that meeting and in the feedback form for the meeting. And to your point about were we trying to foreclose discussion of property values, apparently we didn't do a very good job if we were, because it's still here.

Q. Do you have -- let me just take that back so I can look and make reference to it. And what I'll read to you is their -- no, that's too long.

Under Alternative 4 from the 7/15/2010 draft under property values, it says: Improved impacts compared with Alternative 3 because of added storm surge protection. Then he added: Amenity of ponds which enhanced the landscape.

Is that something that you think that Coastal Engineering is unqualified to discuss, regarding property values?

A. I think he's better qualified to address the impact of the artificial dune that he wanted to construct on storm surge.

Q. Did they want to construct that? Or were they just offering that as an alternative?

A. No. He offered it and offered it very enthusiastically.

Q. Do you know why he was so enthusiastic about making that offer?

A. I -- he is very involved in similar kinds of projects, to my understanding. And I think that's -- you know, that's what -- people do what they do.

Q. Was that some source of contention, that he was in favor of that alternative and that was not something the Town Council was interested in?

A. I think it's fair to say that he had a level of interest in earthmoving that we did not anticipate when we put out the R -- the RFQ and that we did not include as what we thought of as the scope of the project. We were not interested in modifying the topography of that land. We were interested in managing what grew on top of it. And so that was, again, part of, you know, offering things that were not originally intended by Council.

Q. Let me ask you -- again, I'll compare these two drafts here of the management plan. Under Section 1.1, where it says accreted land

management plan goals on the January 30, 2009 draft version, do you see the second bullet point there under "goals"?

A. Uh-huh.

Q. And what is that?

A. I see that -- are you talking about analyze the value of the development of maritime forests in the area?

Q. Correct.

A. Right below analyze the value of shrub forests in the area? I see those.

Q. Okay. And then when I see the final draft from July 15th, 2010, I don't see any reference to analyze the value of maritime forests?

A. Uh-huh. I don't see it here.

Q. Okay. Was that part of the instruction the Town Council was giving to Coastal Science with regards to the scope of work that you wanted them to evaluate?

A. These are all different from the ones that were here originally. This was a later draft than this (indicating). We also had submitted in between this version and this version (indicating) a list of proposed principles to be followed. This was a product of all of Council, where we thought

we needed to give them some clear -- clearer guidance about the approaches that we wanted them to consider and the way we wanted them to produce the -- to produce the plan.

And so three of us on Council, Council Members Kaynard and, now, Madeleine McGee, who by this time was on Council, and I were charged by the mayor to meet and see if we could -- because we had some differing viewpoints on these -- to see if we could hammer out a series of proposed management principles for review and modification by Council, which we would then deliver to the consultants to try, again, to help them stay more on task as we defined the task that we were paying for.

So this, I believe, is probably -- I don't know if it's lifted directly, but it should have been. This was -- it should be reflecting what we ultimately sent to them with the proposed principles.

Q. Is the reference to value that's -- you see in the January version, is that the objectionable part that was the discussion of the e-mails that we've gone through?

A. I think the e-mails that we went through had to do with what was going to be covered

at the meeting and on the feedback form.

Q. Okay.

A. I mean, the fact that this is here indicates that after they gave us this (indicating), we gave them feedback, which is why they gave us this (indicating). And we gave them feedback about what we wanted in the final document that we were paying for.

Q. Was one of the things you considered doing a transfer tax to help fund the -- well, let me just refer you to the document so you can see it before I ask you a question.

A. Sure. I can't remember who has got what here.

Q. Stick all these in the middle. Go to 6686.

A. Okay. We're back --

Q. In Exhibit 1.

A. -- to four digits.

Q. Yes.

A. 06686?

Q. Right.

A. Okay.

Q. I think it's one of the e-mails that was produced to us from January 10th of this year,

from Andy Benke to Craig Parks. Do you have any recollection of evaluating some sort of a tax system or a fee that could be imposed for transactions that would be used to pay for the accreted land management plan?

A. I think this came up because somebody had visited Nantucket and learned about a natural land protection trust or something like that that they had to protect land that -- I don't know if it's a community, county, or a group owns on Nantucket. And apparently, they get some funding for the management of that land through something -- either a transfer tax or something like that.

Somebody brought this, I believe, to Andy's attention and just said, I wonder if this is even something worth putting on the table for discussion. And I guess he was doing his preliminary research on that.

Q. All right. Did you have --

A. I wasn't involved in that.

Q. Okay. That was my question. Did you have any involvement with that?

A. Nope. Nope. I mean, I may have gotten a copy of this, but I couldn't tell you who Craig

Parks is.

Q. I just didn't know if that was something, the real estate committee, that would come under your purview.

A. It's hard to say. It could just as easily come under ways and means, because it involves potential revenue.

Q. Look at 10808.

A. I have it.

Q. And looking at the bottom of -- well, it looks like at the very bottom, something was copied FYI. I don't know what that means. I then see a response from you that says: Thanks, Andy.

A. Right. I see that.

Q. Okay. Do you know what the recipients are? What y'all are talking about there?

A. I think it was -- it may have been one or another kind of letter that we received. There were -- there have been a couple of different letters that have been very similar or actually copied and signed by different people concerning -- and that was sent to Town -- were sent to Town Council in support of front row people's ability to cut or to have the vegetation cut. And I don't know if I saw a list or what.

I'm sure it was something that --
Q. All right. And this --
A. -- was sent around.
Q. -- is an e-mail exchange between you and Andy Benke?
A. Yeah.
Q. It's talking about John Huey, the editor in chief of Time, Inc.
A. Uh-huh.
Q. You mentioned that you recognized her only by her nametag, but met her when out campaigning and --
A. Uh-huh.
Q. -- her first and only question was where I felt on allowing people in the front to have their views and breezes.
A. Uh-huh.
Q. No idea where all the sympathy comes from.
A. Uh-huh.
Q. What did you mean by that?
A. I had no idea where all her sympathy came from. She wasn't a front-row person. I spent all my time out campaigning. I'm not accustomed to that being the first thing that's raised as an

issue by people who don't live adjacent to that land. She lives on Goldbug, I think. She was out in front of the yard doing yardwork. I was out riding around on my bike.
Q. And then you have a discussion with Andy about: John and Kate are my neighbors. I like them both. Figuring them out politically is a puzzle. If you've ever read Time, Fortune, or People that he's responsible for, it's easy to see he's very liberal.
A. Uh-huh.
Q. So to be on the proper rights side is conflicting, it seems. Perhaps Hood was shooting for a who's who list to intimidate.
A. Uh-huh.
Q. What was the -- what are y'all talking about here?
A. Well, you'd -- you'd need to ask Andy what he meant there.
Q. Okay. Well, when you received the e-mail, what did you -- how did you interpret the e-mail?
A. Well, it was a follow-up to the discussion about the Hueys.
Q. Okay. So when he told you about the

Hueys being on the property rights side is conflicting, it seems, what did that mean to you?
A. Again, I didn't write that e-mail. And he -- I see he did it from his BlackBerry. And as careless as people are in regular e-mails, you know they're twice as careless about expressing things very carefully on a BlackBerry or a similar deal.
I'm assuming he's referring to the expectation that people who are liberal on national political issues, you don't expect to be people who are -- who find the property rights issues of most compelling importance to them. I'm not a -- nothing against property rights, but people choose their battles depending on what's important to them. And you usually don't see those two things together, I guess is what he meant, but Andy is the one who wrote it.
Q. And we can ask him what he meant. I just want to sort of sort out, as you are reading this, how you are interpreting it.
A. Yeah.
Q. Seeing -- perhaps Hood was shooting for a who's who list to intimidate, what does that mean to you?
A. Again, Andy wrote that.

Q. I appreciate that. But when you read it, what -- what did you understand it to be mean?
A. I guess I meant that he thought maybe Mr. Hood was trying to get important people to write us in support of continuing to cut the vegetation.
Q. You respond to that e-mail above: Dumb of me not to recognize them as your neighbors. She clearly seemed in that one earlier interaction to be sympathetic to the front-row folks. Have you gotten that impression?
Why is it that you're asking Benke what, you know, Ms. Kate Huey's thought is about the front-row folks?
A. Just curious. As I said, it was curious to me that somebody living on Goldbug, when I told them, introduced myself, said I was running for reelection, that the first thing that she was interested in talking about was the accreted land issue, from that standpoint. Now, I'm not accustomed to people -- not unaccustomed to people saying, you know, what are you going to do about the accreted land; we really need to protect it. On the other side of the issue, in other words.
Q. And then Mr. Benke responds: They have

never said one way or the other a feeling about cutting to me. I suspect they rub elbows with the big money crowd living on the front all the time and have been convinced to support their cause. Again, property owner rights are somewhat inconsistent with a liberal ideology, but then so is having a Gulfstream jet for transportation to work each week somewhat Al Gorish in a way. AB.

What -- how did you interpret that?

A. Just the way you read it. I don't know. I think the words speak for themselves.

Q. Is it normal for a Council member and the Town administrator to talk about residents on the island like this?

A. It's normal for people to engage in a little background information about folks.

Q. How did you interpret the phrase "rub elbows with the big money crowd living on the front"?

A. I think -- I assumed that's what he meant.

Q. And --

A. I don't think there's more to interpret there.

Q. What about the "property owner rights

are somewhat inconsistent with liberal ideology." Did you and Andy discuss that?

A. No. But I think he's referring to what he had said earlier -- or further down on the page, that you and I were just talking about.

Q. Is this BlackBerry he's sending this from, does the Town pay for that? Or is that his own personal BlackBerry?

A. I have no idea.

Q. Did you ever have a discussion with him about the sort of appropriate context of discussing Town matters and people in town after you saw these e-mails?

A. No.

Q. Did it give you have any pause for concern, anything like that?

A. Not really. Andy is very, very fair toward everyone.

Q. Perhaps taking this out of isolation, it wouldn't be fair to him. But if you read these e-mails, it doesn't seem as though he's being particularly fair to everyone, does it?

A. I can't say that he's being unfair. He's just voicing an opinion.

Q. Is the issue of the management of the

accreted land, is it a liberal versus conservative agenda? Is that a --

A. Not necessarily. I mean, frankly, I have been impressed with the extent to which -- in contrast to what Andy was saying, I have been impressed with the extent to which you really can't predict -- cannot predict somebody's island politics by their national politics. I don't -- I think that land belongs to the Town of Sullivan's Island. So it's difficult to see wanting to manage and, to the best of your judgment, enhance its integrity and well-being as being a liberal or a conservative issue.

Q. There was an e-mail, 9188 --

A. I have it.

Q. -- this is back in '04. What is a "fox guarding the henhouse" reference to?

A. Meaning the e-mail? Or the expression?

Q. The subject matter of the e-mail here that's --

A. Yeah. This is from Mary Ellen Rogers, who I don't know even know when she -- whether she was still on the island then or not. She lived on the island for a number of years. She actually was on the planning commission when I was. And she's

very active in the turtle watch groups out there.

And she is, I'm -- assume referencing Randy Robinson, who is the building inspector in zoning and -- I don't know. Then, we still had a zoning inspector. But Randy was the one who typically was involved, at least in monitoring the cutting under the permit process.

Q. Any idea what -- talking about Randy not being the one -- or "is obviously not the one to inspect," do you know what that is in reference to?

A. I don't if she meant generally that she didn't think he was inspecting properly or if -- sorry. I got distracted.

Q. Yeah. Let me --

A. I'm used to giving talks. And when they give me the -- when they show me the five-minute thing, I start wondering about what I have got to speed up on.

Q. Yeah. No problem. Here, it says -- the e-mail from Mary Ellen Rogers talks about the fox guarding the henhouse, and Randy is obviously not the one to inspect, take a look at the dunes in front of Mark Sanford's house.

A. Right.

Q. What are they talking about?
A. I assume she was saying that the cutting was done inappropriately there, I assume. And she's -- it sounds like -- I mean, you have all the information I have. I guess she's assuming that Randy is not properly looking over -- after that cutting there. Randy has property, or family property, close to that location. And I don't know if that's why she used the fox in the henhouse reference or not. But again, that was her comment.
Q. Okay. Look at Page 10839.
A. Okay.
Q. It looks like you were, I guess, forwarded from the mayor a letter from Robert Hood with memorandum dated 1/18/2010. And why would the mayor just be sending this to you and Mike Perkis, as opposed to all Council?
A. I am assuming that it has to do with -- in my case, that I am chair of real estate.
Q. Okay.
A. And in Mr. Perkis's case, he's mayor pro tem.
Q. So --
A. If I had to guess.
Q. So normally, you would get a -- if

there's an e-mail or correspondence coming in that touches on your committee, then it comes to you as chairman of the committee?
A. Typically.
Q. And then you disseminate it to the other two members of the committee?
A. In this case, I don't know that I had -- he was asking for a decision from me. He just sent it as information.
Q. Well, Mr. Perkis says: Interesting that only 30 of the folks supporting the -- this position do not have a personal self-interest, i.e., live on front beach. Just a quick look, but I'm close.
What's he talking about there?
A. Whatever was in this packet of correspondence from Mr. Hood, I assume.
Q. Any reason why Mr. Perkis would think you would be interested in knowing how many of the people supporting the position don't live on the front beach?
A. That would be -- it would only be speculation.
Q. This was after --
A. He was commenting to the three people

who had been in -- on the earlier e-mail.
Q. Which is you --
A. Or to the two other people. Excuse me.
Q. You and the mayor?
A. Yeah. Uh-huh.
Q. Is that significant that there are 30 people -- only 30 people who support the particular position that don't have a personal self-interest in it, in your evaluation of the --
A. I'd want to know what the other number is. I don't remember.
Q. Other number being? Other number of people that support it, but are -- have a financial interest?
A. Yeah. If it's 30 people supporting it with no self-interest and 5 with a self-interest, I'm a lot less impressed.
Q. Why is that?
A. If the idea is that people's likelihood of supporting the preserve the cutting status or cut more status, if a majority are a large minority even, but the majority in particular are the people who are saying we should cut that land, cut the vegetation down, and they're not the people that live adjacent to it, that gives me a better idea of

the extent to which that sentiment might be representative of the entire island.
Q. And what is the personal self-interest? What does that refer to?
A. I assume the fact that they are -- live adjacent to it.
Q. What type of support are you aware of that exists for people who live adjacent to the maritime forest for promoting the continued growth of the maritime forest as opposed to --
A. It's less -- it's less numerous than those who want to cut.
Q. And how significant is that to you, as a Council member, in trying to determine which way to -- to steer the ship, so to speak?
A. Well, I mean, all of us on Council -- all of us on Council are elected at-large. So we all represent the entire island. On the other hand, if a large majority of people living next to the accreted land want to cut it, that led to the consideration such as trying to come up with a plan for a transition zone. And that was to take into account the concerns that had been voiced -- many of the concerns about rats and fear of crime and the fear of fire and all those

things.

The idea that we told the -- the consultants to pursue about creating a transition zone on the accreted land was the Towns, give a little more breathing room to the people next door to it. That was in -- in reaction and in response to what we had heard.

MR. JAMES HOOD: He's got to change the tapes real quick.

THE VIDEOGRAPHER: This concludes Videotape Number 2 of the videotape deposition of Patrick O'Neil, Ph.D. The time is approximately 3:38 p.m. We'll now go off the record.

(A recess transpired.)

THE VIDEOGRAPHER: We are now back on the record. Today's date is December 7th, 2010. The time is approximately 3:49 p.m. This is Tape Number 3 in the videotape deposition of Patrick O'Neil, Ph.D.

BY MR. JAMES HOOD:

Q. Dr. O'Neil, one of the e-mails that we've been discussing referenced an enclosure with a list of names. I'm just going to -- I'm going to hand it to you.

MR. JAMES HOOD: Let me go ahead and

mark it. I'll mark it Exhibit Number 4.

(PLF. EXH. 4, Endorsers for Sullivan's Island Plan, was marked for identification.)

BY MR. JAMES HOOD:

Q. Endorser list. And ask if that's what you are referring to.

A. I -- I can't tell you whether that's the specific list that we got at that time or not.

Q. Okay.

A. But it's one like this.

Q. All right. Have you received a list of like a maritime forest endorser list, so to speak, for lack of a better term, demonstrating the support and favor of the development of a maritime forest?

A. Not recently. I may have gotten one back in '05 or whenever it was that we liberalized the cutting regulations.

Q. Uh-huh.

A. Because that seemed to energize a lot of people who are interested in protecting that land in something closer to its natural state rather than periodically cutting it. But I can't tell you exactly whether I got a list -- such a list then or not. But I mean, I heard from more

people then.

Q. Right.

A. There are groups that, you know, have been very interested in promoting that side of the issue -- a group.

Q. Are -- are there portions of the accreted land where there is some phase or process of a maritime forest that's not in front of residential homeowners?

A. Sure.

Q. What areas are those?

A. In front of the fort. In front of the school.

Q. Okay. And the -- the areas that we are dealing with that aren't in front of the fort and the school, I mean, obviously you recognize it's a very polarizing issue for a lot of those homeowners.

A. Uh-huh.

Q. Is that fair to say?

A. I think it's a polarizing issue for the island, for many people on the island.

Q. And the homeowners, in particular, have expressed concern of the loss of the ocean view and breezes and the -- what they perceive to be a

diminution in the value of their property. You -- you're aware of that?

A. Yeah.

Q. And for those homeowners, if Mr. Hartnett is right, for example, and the value of their homes is reduced by a million dollars, well, that's pretty significant. Would you agree with that?

A. I would agree that's a very big if that you started that with.

Q. Would you agree with it, if you agree with it as a big if?

A. If suddenly somebody's property were reduced from their -- what they paid for it or what it was last appraised at by a million dollars, that's significant.

Q. Has the Town thought to go door to door with those homeowners who are going to have the front-line impact of the management decision and to talk to them about what they think?

A. We've talked to all the islanders that care to talk to us about it. And I don't think it's appropriate to do a sort of 100 percent sampling for one particular group of people on the island and not for the others. But we've gotten a

tremendous amount of input from people who live adjacent to that land. And as I said earlier, we've paid attention to it.

The management units that have been proposed, for example, differentiate between the parcels of the accreted land there in front of the fort and the school versus those that are in front of homes. We're proposing a buffer, a transition zone, for those areas that are in front of homes.

Q. Well, for someone like a Mr. McCutchen, whose house you have been to, who purchased a house in, say, the '70s that predates the transfer of the accreted land to the Open Land Trust, where he may have paid $65,000 for a beach house and he had the ocean 30 yards in front of his property line at the time he moved over there --

A. Uh-huh.

Q. -- and as that land has accreted and the Town, up to this point, has permitted vegetation management in the form of cutting, when they do away with that to manage the property as a whole, where the Town then makes a decision about what gets cut, if anything, and which areas are managed and how they are managed, how is that not an action that negatively impacts that homeowner,

no longer having that ability to make the decision him- or herself?

A. Well, for him, it would be a negative change, I suspect. On one side of my house is a vacant lot. And when I moved there in 1999, it was completely uncared for. It was overgrown completely and wildly, and I loved it that way. The birds and everything that hung out there would come to my feeder. It gave me a buffer, a privacy buffer, between myself and the next house on the other side of it.

About three or so years ago, the owner of that property decided to cut it all down so she could show off the marsh view and try to sell it. And I was -- I suffered a loss to the kind of scenery that I like; but I had nothing to say it about it. It wasn't my lot.

Q. So the -- the fact that those homeowners don't own that property, is that something that is of significance in your evaluation of this?

A. The Town belongs to the -- the land belongs to the Town. That is of absolute importance in how we approach its management.

Q. What about the adjacent owner's ability

to cut -- apply for permits to cut the vegetation that has existed and the right to trim the vegetation to maintain those views?

A. Uh-huh.

Q. Is that not of paramount importance to -- to you when you evaluate the proposed options?

A. If by paramount you mean the highest level of importance, I would have to say no. Because my obligations are to the Town as a whole.

Q. Well, what about the expectation of a property owner who has property adjacent to them who has been permitted to maintain it through the permit application and the zoning ordinances? To suddenly take that away from them and no longer have that, is that change something that -- that they should have predicted? They being the property owner?

A. Well, they have been able to cut at the pleasure of the Town.

Q. And so the Town can take that pleasure away on its own volition?

A. It's the Town's property. The Town has a right to manage its own property and to govern the entire Town through zoning ordinances. Changes

in zoning ordinances very often have an impact, one way or another, for people involved -- involved in them or next to them.

Q. You mentioned your house. Was that home constructed, or did you build that home?

A. It was built when I bought it.

Q. And that's the Thompson Avenue?

A. Uh-huh.

Q. What's the number of that?

A. 1738.

Q. Do own any other property on Sullivan's Island?

A. No.

Q. Other than Town Council and MUSC, are you employed anywhere else?

A. No. Other than being a speaker and receiving an honorary and things like that.

Q. Prior to -- what are you a speaker on?

A. Obesity.

Q. Prior to your work at MUSC, what did you do for a living?

A. I've been at MUSC since -- continuously since '75, and I was a graduate student before then.

Q. All right. Have you held any --

A. Well, I was also part-time at the VA Hospital, which is done by faculty at MUSC also.
Q. Any other profession other than in that realm?
A. No.
Q. Did you ever sell real estate?
A. Never -- well, I take that back. I've sold two pieces of property that were mine, but I used agents.
Q. Relatives in Charleston County with -- do you have any relatives in Charleston County?
A. No.
Q. Who lives in the 1738 Thompson Avenue home?
A. Me.
Q. Anyone else?
A. No.
Q. Ever been arrested or convicted of any crimes?
A. Nope.
Q. I didn't see a CV or anything. Where -- where did you get your medical training, your education?
A. I went to graduate school in psychology

at the University of Georgia, and my bachelor's degree was from LSU in economics.
Q. The survey form we've talked about plenty today, who actually made the change to the survey form?
A. The actual changes?
Q. Yeah.
A. I think they were done finally at Town Hall.
Q. By whom?
A. I'm thinking Lisa Darrow, but I can't swear to it.
Q. And the changes that were made to the survey forms that we talked about, were those changes approved by vote of Council?
A. I don't think they were approved by a vote, per se, beyond the decision that had been made that I -- we've talked about repeatedly today.
Q. Was that survey form disseminated and used?
A. At the meeting?
Q. Ever.
A. Yes. It was used at the meeting, and it was -- I think it was available for download at the website for a period of time after.

Q. Who was in charge of tabulating the responses to the survey?
A. I think Lisa and Andy got them and tried to compile them and did whatever tabulating they were able to do. I don't know that -- I don't remember the extent to which they ever came up with a specific score sheet or whatever, if you will, that says we got this many responses on this. There was, frankly, some confusion on the part of a number of people about how exactly to use the forms, or they just didn't do it. They didn't use them as we had hoped they would in terms -- people don't follow instructions.
Q. Well, what was the --
A. They gave them a means of -- a medium to use to kind of jar them to say something. Some people, I believe, just turned them back in and said cut everything. Others may have turned it back in and said don't cut anything.
Q. How did the Town utilize the information that was obtained in connection with those survey forms?
A. I think the information was shared in some manner -- orally or on paper, I can't tell you -- with Council. And I believe copies were

sent to Dr. Kana, I believe.
Q. Were the -- the physical survey results -- I mean, was something presented to Town Council so y'all could know how the Town responded?
A. We got some information. But I don't know whether Andy just simply reported it orally to us at a meeting or whether he had handouts about it or what. I don't remember.
Q. How would I find out that answer?
A. You would ask Andy.
Q. If he reported it to you orally, would that be obviously recorded?
A. I would imagine.
Q. What was the -- as you sit here today, do you have a -- a recollection of what the response was from the community in connection with those opinions?
A. It's hard to tell. Again, you know, some people just -- you know, it was -- you could look at that form and think, well, you would be able to come up with some very quantitative information from this. You'll have the number of people that prefer Option A for this factor, Option B for this factor.
But as they were actually used, you

know, as I said, people didn't use them as we had hoped they might. So it was difficult to come up with a straight numerical summary. I know we were given some general sense of what the responses were. My recollection is that it was sort of predictable, you know, people on both ends and then some in the middle with more nuanced views.

We also had several of these forms that were returned that all said essentially the absolutely same thing, with different people's names on them and very, very similar handwriting on all of them. So it was difficult to tell how to count those, if you were going to count them.

Q. How do you know if they were or were not counted?

A. Andy would have to tell you that.

Q. How do you know that there were forms with the same handwriting?

A. I said they appeared to be similar handwriting.

Q. Okay. I was under the impression from your earlier discussion that you hadn't actually looked at the surveys.

A. No. I didn't say that. I didn't intend to. I'm sorry. I'm sure I flipped through

them. We probably had the book of them at the Town Council meeting. And that's how I know what the range of responses was. But it was somewhere, I guess, 100 to 200 of them. I really couldn't tell you. I'm sure you have them all.

Q. Have you thought about turning the forest on Sullivan's Island into a state park?

A. No.

Q. Is that something that has been addressed at all?

A. Not that I remember.

Q. Does Council intend to hold a vote to allow the 1991 ordinance to be reinstated, allowing 3 feet of cutting?

A. I would be very surprised if we did. I have not heard anybody suggest that.

Q. All right. Let me get you to look at 3385 in Exhibit 1.

A. I'm sorry. At what?

Q. 3385.

A. I don't think I have that.

MR. HAIR: It's in that first batch.

THE WITNESS: I have got 0198 to 01297.

MR. JAMES HOOD: Keep going.

THE WITNESS: You are missing a digit.

MR. JAMES HOOD: This one.

THE WITNESS: 3385. I'm sorry. I misheard it. Okay.

BY MR. JAMES HOOD:

Q. This looks like to be an e-mail authored by you?

A. That's correct.

Q. I want to ask you is -- you are referring to language suggestions regarding principles. What -- what document is this in reference to?

A. This is in reference to the principles and guidelines document that I referred to earlier, that was put together initially by Council Members McGee, Kaynard, and myself at the direct of the mayor to then be presented to Council for their review and ultimate approval. These are the principles that we wanted to submit to the consultants so that we could make sure that we were -- that they would be able to know what it is we were looking for in their final report.

Q. What is the discussion about enhancement that you're alluding to there in the first sentence of this e-mail?

A. I don't know what principle 5.b is --

or was at that point, I should say. This was a document that was gone over in excruciating detail. And the drafting of it originally, actually there were three similar types of documents that had been independently proposed by three of us. And we each had sent them to Council saying, let's talk about this.

And the mayor said as we were talking about them, you know, why don't the three of you guys put your heads together on this and see if you can come up with essentially a consensus document for the three of you, which then Council could review, discuss, modify, and potentially endorse and send to the consultants.

Q. All right. Let me hand you --

A. So there was a very long weekend that Ms. McGee and Mr. Kaynard and I spent at Town Hall going over every word and punctuation mark.

Q. Is this the -- the document that y'all ultimately generated?

MR. HAIR: Where is that one?

THE WITNESS: It looks like it. I'm sorry. Here. I'm sure this --

So what is it again now? 5?

BY MR. JAMES HOOD:

Q. Let me just make sure. Is that the document that you were referencing about the principles?

A. I'm sure this is different, to some extent, from whatever we were referencing -- a different version --

Q. Okay.

A. -- of what I was discussing here. The -- my e-mail was the night before, late. And obviously, this was dealing with a somewhat earlier version of this that Council had -- all Council members had received to review. And so what we did is we had all -- again, after the three of us came up with something that we thought was appropriate, then Council members looked at it for some additional reaction, wordsmithing.

But again, the idea was that we wanted to have a document that we could look at in an actual meeting of Council and modify some more then, if need be, and then finalize. So this is 5.b.1. Mary Jane had concerns. I don't recall about an -- most of the -- well, I'm assuming that Mary Jane had concerns? I don't know where the -- oh, here's an enhancement throughout Subitems 3, 4, and 5.

Apparently there had been some discussion about, you know, would this be perceived as a promise that we would provide these -- for these things, assuming that we were not prepared to promise anything like that at the time. And so it looked like we were talking about adding the words "where appropriate." And it looks like Council agreed to that.

Q. All right. At the end of that e-mail, you talk about the three of us Council members in this e-mail.

A. Uh-huh.

Q. That's you, Mike Perkis, and Mary Jane Watson?

A. Uh-huh.

Q. Why would this not include Jerry Kaynard, if he was involved in this long weekend of drafting?

A. Because I think there must have -- this issue must have been something where Mary Jane and Mike were the ones that were primarily concerned about it, would be my only guess. We certainly weren't trying to hide anything from Jerry or anybody else.

Q. And then it says: As it involves

Mike's suggestions, as posted on the website.

What are you referencing?

A. I think we had one of those earlier versions up on the website for comment. I had forgotten that, but I think we may have. And I don't recall whether we had -- it would have been unusual, but it seems sort of familiar that maybe Mike Perkis had comments on his version and he just put them up to have them posted as well, so everybody could see what his thoughts were. But again, that, we would have to find out from somebody else.

Q. What did you mean when you say, "we should not expand any kind of electronic discussion beyond this"?

A. Well, our Town attorney had cautioned us about not using e-mail for discussions involving a quorum or more of Town Council, to avoid any appearance of carrying out Town business outside of public meetings.

Q. What kind of discussions, if not electronic, would be appropriate then?

A. None. But that's the kind we were having.

Q. And then you say that "if any of us

wishes to disseminate anything about all this to Council, we should send it to Andy and ask him to do so to avoid an appearance or reality of electronic meetings." What does that mean?

A. It means just what it said. That we had been instructed by our Town attorney that if we wanted to have any sort of -- not broadcast, but if we wanted to submit ideas or documents to members of Council and then feedback would be received, if we were going to do that via e-mail, that it should be done through the Town administrator so then people would not reply to all, rather than send out an e-mail to everybody on Council and then each Council member applies to all and you have got a discussion going back and forth.

Q. What do you mean where you say "avoid any appearance or reality of electronic meetings"?

A. Just that.

Q. I mean, was this, in reality, an electronic meeting?

A. No. So I thought we should not do anything that could be misconstrued as one if it were not.

Q. Yeah. I got -- I mean, that's the appearance part.

A. Yeah.
Q. But what's the reality?
A. That refers to the first part of that sentence, which is "if any of us wishes to disseminate anything about all this to Council, send it to Andy rather than sending it to everybody all at once," which might have been, in reality, an electronic meeting.
Q. Does the Town give y'all e-mail addresses? I see you are using an musc.edu e-mail.
A. Right.
Q. I mean, that's a -- I mean, I -- that's a state-provided e-mail?
A. It's a university-provided e-mail.
Q. Yeah. But does -- does the Town give you your own e-mail address?
A. No. I don't think Council members currently have a Town e-mail address.
Q. Are you -- when you have communicated electronically in any way related to Town Council, have you used any e-mail address other than this musc.edu address?
A. I also have a private Comcast address. I don't use it as frequently for governance issues, because I'm usually doing work and this is the

e-mail that's up. But I have used it for some things. I think you were provided with a small number of e-mails from the Comcast address as well. I use the Comcast address for campaign-related things, if it's political.
Q. And I know the State's got a computer and domain usage policy.
A. Uh-huh.
Q. Is it permissible for you to be using state domains for this type of work?
A. I have never had anybody question it.
Q. Do y'all have an Internet usage policy?
A. Uh-huh.
Q. Does it say that any personal correspondence, e-mails, should not be conducted on your state account?
A. I don't remember what it says. It's been a long time.
Q. Do you have a BlackBerry or an iPhone or some other apparatus that let's you send and receive electronic mail?
A. I have an iPhone.
Q. And is that account linked up to your MUSC account?
A. Uh-huh.

Q. Or is it your Comcast account?
A. Both.
Q. Both? Did you communicate with text messages with any of the Town Council members or Town administrators regarding, you know, any Town business?
A. I have, on occasion, sent Andy a text message. But I don't think any -- any of them have involved any of this.
Q. And what is -- is that account -- is that an MUSC account? Or is that a, you know, personal --
A. My personal account.
Q. And what is the cell phone provider?
A. AT&T.
Q. And the cell phone number?
A. 843-670-9266.
MR. JAMES HOOD: Let me see that bottom book there.
BY MR. JAMES HOOD:
Q. Mr. O'Neil, I'm going to hand you a notebook that has just got a First Amended Complaint and exhibits in it. I don't --
THE WITNESS: Do you need to see this?
MR. HAIR: No, I got it.

BY MR. JAMES HOOD:
Q. What I want you to do is get you to look, if you will, behind Tab 3, which is Exhibit 3.
A. The Land Trust deed, the title?
Q. Correct.
A. Okay.
Q. Have you seen that title before?
A. Yes.
Q. Do you see on Page 1 of Exhibit 3 that the fourth "whereas" paragraph says: Whereas natural scenic, educational, aesthetic, scenic, and recreational resources used herein shall, without limiting the generality of the terms, mean the condition of the property at the time of this grant, evidenced by, colon, then (A) appropriate survey master, United States Geological survey; (B) aerial photograph of the property at appropriate scale; and (C) on-site photographs taken at appropriate locations on the property.
A. I see that.
Q. Okay. Have you looked back at survey maps, aerial photographs, or on-site photographs to understand the condition of the property at the time of the grant?

A. I have seen photographs from back then. It's been awhile.
Q. Okay. Does the Town maintain the documentation of the condition of the property in a, you know, a state where it can be reviewed by members of the public?
A. You'd need to ask Andy Benke about that.
Q. When you looked at pictures from then, is it -- was that something at Town Hall that you had to look at? Or is it something that Town Council was presented?
A. I don't remember.
Q. When y'all modified the zoning ordinance for the trimming of vegetation in '05, did you look back to see what the condition of the accreted land was in 1991 in the photographs and the surveys and aerial --
A. I'm sorry. What year were you saying?
Q. 2005.
A. I don't recall that coming up at the time.
Q. Do you see Paragraph 1 under the restrictions there? That's on the second page.
A. Yes.

Q. All right. Those are the restrictions that you are familiar with?
A. Looking at it quickly, I assume this is the same document I have looked at a number of times. I don't recall them from memory, but it looks like it.
Q. In the first paragraph, it talks about how the property, meaning the accreted lands, will remain in its natural state. No changes should be made to its topography or vegetation. No structural improvements shall be erected on the property.
A. I see that.
Q. Okay. Look at Number 2 where it says: The Town Council is given the unrestricted authority to trim and control growth of vegetation.
A. I see that.
Q. Is that what -- the authority under which the Town is acting to move forward with an accreted land management plan?
MR. HAIR: I'm going to object to the form. It asks for a legal conclusion.
You can answer it, if you know the answer.
THE WITNESS: Do I understand I do not

have to answer that? Or I --
BY MR. JAMES HOOD:
Q. No, he'll -- no. You do. He'll tell you if there is something you don't have to --
A. I couldn't hear the --
MR. HAIR: Yeah, you have to answer. I object to the form of it, but you -- you still get to answer, if you know the answer.
THE WITNESS: All right. I mean, we -- we rely on our Town attorney for legal advice about the basis for ordinances that we enact. But this looks like language which is consistent with what we've done.
BY MR. JAMES HOOD:
Q. Okay. And then maybe the easier way to ask the question then is: Under what authority is the Town acting when it's making changes to the vegetation ordinances to the accreted land?
A. Again, that seems like it's more of a legal question than I'm able to answer. But as a member of Council, I see us as having responsibility for the management of that property which is owned by the Town. And secondly, we have authority to enact zoning ordinances, which is where these regulations reside.

Q. In Paragraph 2 where it talks about the unrestricted authority to trim and control growth of vegetation, do you see that?
A. Uh-huh. I do.
Q. Do you interpret that to mean to -- unrestricted authority to not trim and control growth of vegetation?
A. I see that we -- it gives us the authority -- I read it as saying if we wish to do it, we may.
Q. Okay. For the following purposes --
A. Correct.
Q. -- mosquito control, scenic enhancement, public and emergency access to Atlantic Ocean, providing views of the ocean and beaches to its citizens?
A. That's correct.
Q. Now, I --
A. And there are also some things in the next paragraph.
Q. Yeah. We'll get to that one in just a minute.
A. Uh-huh.
Q. I had asked you awhile ago whether views of the oceans and beaches was one of the

aspects of this, and you told me you just didn't remember the title --

A. Uh-huh.

Q. -- you know, from memory. As you look at it now, will you agree with me that these restrictions do provide a means to maintain the views of the ocean and beaches to its citizens?

A. It allows the Town the -- you know, it gives the Town the authority to do that, to do trimming and controlling of vegetation, should it wish to for those purposes.

Q. Okay. In Paragraph 3 -- well, let me ask you. I mean, it -- has any regulation to the zoning -- or any modification to the zoning ordinances related to vegetation management been performed for the purpose of mosquito control?

A. I don't think we've had any ordinance issues with regard to that.

Q. What about with regards to scenic enhancement?

A. Well, as you know, the ordinance has in several different ways over the -- since the time of this, permitted people to apply for a permit if they live adjacent to that property to cut the vegetation between them and the beach. And if

that's considered scenic enhancement, then I guess you would say that we have addressed that in the ordinances --

Q. All right.

A. -- thus far.

Q. Public and emergency access to the ocean?

A. We do -- without requiring any ordinance change, we maintain beach paths and emergency access paths, as I discussed earlier.

Q. And then providing views of the ocean and beaches to the citizens?

A. That's -- obviously you could state that what we have permitted to be done with the cutting permits addresses the issue of views of the ocean and beaches for those people who live adjacent to it.

Q. In Paragraph 3 then, it talks about the Town's ability to improve, change, modify, or alter the property, if it so chooses.

A. I see that.

Q. Has the Town modified the vegetation management ordinances in connection with Paragraph 3 here since 2005?

A. Since 2005?

Q. Correct.

A. To my knowledge, we've not done anything to the ordinance that concerns the accreted land since 2005, for any reason.

Q. What about when you went from 7 feet to 5 feet?

A. That was in 2005.

Q. Okay. So how about let's expand the question to: Since 1991, has the Town done anything to improve, change, modify, or alter the accreted land?

A. Since '90 -- I'm sorry. Since '95 -- you said since '91 or '95?

Q. Yeah, yeah. Back it up to '91, since -- after this title to this property.

A. Yeah. Sure. I can't speak to all of that period of time because I've not been involved in Town government all that time. Obviously we've dealt with the emergency access and the walkways during that time. We have permitted, as I mentioned earlier, some snow fences, for example, for dune rebuilding. Drainage and I guess you could consider mosquito -- well, as far as drainage, I mentioned we have done things like install culverts across the built-up emergency

access road to allow for a little bit of water flow.

Mosquito control, the County sprays regularly. We maintain and improve public walkways to the ocean as well. There are a number of boardwalks that have been built with State -- in part with State grant money. Beach renourishment, I don't think that the Town -- I may be wrong -- but I don't think the Town has on its own done anything there. But I think individual citizens have gotten permission from OCRM and, when necessary, from the Town to deal with badly eroding beaches in front of their house -- houses.

Erosion control, can't say much about that. Vegetation management, I don't know whether we've ever done anything active to go out after aggressive and evasive non-native species of plants. But that could be done. Educational programs, I don't know that the Town has sponsored these; but as I mentioned earlier, the school or some school association had done a nature walk. The Islanders for Conservation have sponsored educational programs.

Public safety, when we have improved the emergency access path, that's been involved.

Public health, I don't know that anything specifically has been done there. Scenic enhancement, we've already talked about.

Q. And scenic enhancement, you are talking about the trimming of the vegetation?

A. The cutting -- cutting permits. Trimming permits.

Q. All right. So those provisions, then, are -- that you have discussed have been done or --

A. For the most part, either by the Town or by other people.

Q. Okay. For example, in connection with -- you mentioned public walkways.

A. Uh-huh.

Q. This permits the addition of public walkways, underneath the -- the restrictive deeds?

A. Well, what I was talking about was improving; was not cutting new access paths, but improving existing paths, public access paths.

Q. Right.

A. And there is one at nearly -- at the end of nearly every station. Those stations being cross streets, as you well know. We've put up boardwalks across some low-lying areas that are frequently under water.

Q. Why would you do that?

A. So that the public could have better access to the beach.

Q. If the water is its natural state, why would you not want them to enjoy that?

A. They can, from on top the boardwalk. We've not altered the water. We've just helped people keep their feet dry. And we've obviously tried to provide for some measure of handicap access. There are not near enough of those paths, but we've tried.

Q. Okay. In connection with performing one of those improvements or changes, however you want to describe it, to the accreted land, has Council made specific written findings of fact for each one of those?

A. I don't know that we have.

Q. If you haven't, would you agree that you are in violation of the terms of the restrictive covenants here?

A. I wouldn't. It would depend on the discussion that had taken place prior to the decision.

Q. Well, let's keep reading --

A. Well, maybe I don't know what you mean

by findings.

Q. Sure. Yeah. That's what I mean. Let's keep reading. It says: Council shall make specific findings -- written findings of fact. Number 1, that a proposed public action is proposed solely for the purpose of furthering or affecting one or more of the enumerated public policies.

A. Uh-huh.

Q. Number 2, that proposed public action is necessary for the health, safety, or general welfare of the Town. Number 3, that the benefits of the proposed public action outweigh the damage done to the aesthetic, ecological, or scientific or educational value of the property in its natural state. And 4, that in making its findings of fact, Council has given due and reasonable consideration to -- and it lists three actions there.

A. Uh-huh.

Q. In connection with those actions that have been taken, has -- has the Town Council made such specific written findings of fact?

A. I don't know that we have issued or produced a specific written document for each of these instances. Certainly if we were getting grant money to do things like improving the beach

access paths, there would have been written documentation to the granting agency, specifying the need and the potential benefits and the fact that it would not be causing any damage.

Q. Well, let's look at underneath the --

A. The County doesn't really get -- need our permission to spray for mosquitos. And I'm not sure that that actually qualifies as improving, changing, modifying, or altering.

Q. Well, I mean, this is the -- the title to real estate. These are the, you agree, the promises that the Town made and agreed to in purchasing the land from the Lowcountry Open Land Trust?

A. Uh-huh.

Q. Right? And it sets forth these restrictions that we just talked about.

A. Uh-huh.

Q. And in those -- is that a yes?

A. Oh, yes. Sorry.

Q. And in that -- in those restrictions, there are provisions for the Town to have unrestricted authority to trim and control growth of vegetation for purposes enumerated in Paragraph 2. Correct?

A. I'm sorry. Say that again.
Q. Yeah. There are -- the Town has unrestricted authority to trim and control the growth of vegetation for the purposes set forth in Number 2.
A. Okay.
Q. And then Provision 3 sets out the standard by which the Town Council of Sullivan's Island shall have the right to improve, change, modify, or alter the property, which is the accreted land.
A. Yes.
Q. And then it sets out an enumerated list of public policies. Correct?
A. I see.
Q. Okay. And we went through those. Right?
A. Uh-huh.
Q. And you told me those things on that list that the Town has done. Right?
A. That's correct.
Q. And then I asked you if, in conjunction with doing those things, the Town had made specific written findings of fact that contained what's required in the bottom of Page 2 and the top of

Page 3 of the deed restrictions.
A. Uh-huh. Uh-huh.
Q. And as I understand it, as you sit here today, you're not aware that Council has made specific findings of fact in connection with the action done by Council related to the accreted land that we talked about.
A. Not as a separate document. As I said, prior to agreeing to do things like improving the beach access path, there would be discussion in an open Council meeting which would take into account and cover issues such as the need for it, the public purpose to be served by it, and so on.
I know that we had similar -- and those are obviously all in the oral recordings of those meetings. To some extent, they may be reflected in the written minutes. Probably not. Probably not as specifically as one might expect, looking at this. On the other hand, I would say that the Land Trust, to my knowledge, has not objected to any of the actions that we've taken. They inspect it, I think, annually or every two years.
Q. Okay. The requirements, though, of these restrictions, one of them is that the Town shall make specific written findings of fact. Is

that correct.
A. That's -- I'm looking at that here. That's what you've said.
Q. Okay. Well, it's not what I said. That's what the Town agreed to, isn't it?
A. That's what's here.
Q. Okay. And this document is signed by the Town?
A. Yes.
Q. All right. And beneath Paragraph 4, it says: The above-described written findings of fact must be made prior to each individual public action relating to the property and shall be specific to the circumstances of the proposed public action and not merely conclusive in nature.
A. Uh-huh.
Q. In no event shall any public action violate Provision 4 here out -- or hereof.
A. Which followed, right?
Q. Right.
A. Okay.
Q. So as you read this deed and the restrictions contained in the deed --
A. Uh-huh.
Q. -- is it -- is it clear to you now that

to do these improvements, changes, modifications, or alterations to the accreted land, it has been necessary for the Town to make specific written findings of fact prior to each individual public action?
MR. HAIR: I'm going to object to the form. Again, it's asking for a legal conclusion.
But you can answer the question.
THE WITNESS: I'm not a lawyer, and I can't draw a conclusion on that.
BY MR. JAMES HOOD:
Q. I'm not asking you to draw a conclusion. I'm asking you whether this makes sense to you or not.
A. It depends on how you read it. I think you could certainly read it to come to your -- you could arrive at your conclusion based on a very -- on the most strict reading of this.
Q. Well, it is called a restriction.
A. I understand that.
Q. And the word "strict" is in there for -- I'm not going to argue with you about it.
But look here on Page 2 of the document. Do you disagree that Council has to make specific written findings of fact, at least

according to this?
A. No. That's what it states there. And I would need to rely on our attorney as to what constitutes an adequate amount of specific written findings of fact.
Q. Okay. To your knowledge, is that something that the Town has done prior to those actions that you've previously described to me here today?
A. Well, I have described to you the manner in which we arrive at the decision to do those things and the fact that it's done in an open public meeting.
Q. And so then --
A. The minutes of which are recorded and the actual meeting of which is recorded.
Q. Are you telling me that the Town is complying with the letter of this?
A. I don't know if it's complying with the letter of this or not.
Q. Do you see Paragraph 5, that these restrictions may be enforced by the Town, any property owner within the Town, or any voter registered within the Town?
A. I see that.

Q. And that the forbearance to enforce these terms in the event of a breach is not deemed a waiver? Do you see that?
A. Yes.
Q. So because -- and the reason I point that out is you mentioned that the Open Land Trust has -- I guess reviews what y'all do --
A. Uh-huh.
Q. -- and it hasn't complained.
A. Uh-huh.
Q. But this document, these restrictions, provide a mechanism for the members of the Town to enforce the strict restrictions in here. Does it not?
A. That would be a legal question that I'm not able to address.
Q. All right. Let me ask you to look at Paragraph 5. When it says: These restrictions may be enforced by the Town or any property owner in the Town or by any voter registered within the Town --
Do you need an attorney to interpret that?
A. No.
Q. Do you agree with me, sir, that that

first sentence of Paragraph 5 clarifies that any registered voter or property owner within the Town may enforce these provisions?
A. It does. Again, I don't know what's meant by enforce. I don't know if that means an individual can go out there with a police whistle and stop anything that's happening or if they have the right to go to the Land Trust or whatever. I mean, I don't know what that means legally.
Q. Sure. That's good.
A. That's not my job to.
Q. Yeah. Well, let's look at the sentence. It says: Such persons may seek an appropriate remedy for any violation, including, but not limited to, injunctive relief to force the termination of the violation or to permit restoration of the area damaged by the prohibited activity.
A. Uh-huh.
Q. That would answer your question about blowing a police whistle there.
A. Uh-huh.
Q. Does it not?
A. Well, I take it to mean that they can go to a judge and say get rid of what they did.

Q. That's right.
A. So he could tell them to tear out the handicap rank -- ramp.
Q. Provision 8 in these covenants, or these restrictions, which is on the following page, talks about a form of a referendum. Are you familiar with that?
A. Yes.
Q. Has there been a discussion whether to utilize a referendum provision to seek a, you know, a change of the accreted land in accordance with provisions of Paragraph 8?
A. To my knowledge, there's been no discussion of that by Council -- by members of Council.
Q. Okay. And then Number 9, we talked about this at the beginning.
A. Right.
Q. I asked you what the duration of this was. You see this?
A. Now I see it's 50/50 -- and 50.
Q. Do you know whether the Town did any of these things that we've just talked about in connection with the modifications to the zoning ordinance that you described earlier, post 1991?

A. I was not involved in 1995 when those changes were made. Let me think about this. Wait a minute. Actually, I think -- I think I was -- yeah. I was on the planning commission then. That required a change to the zoning ordinance. So I do know that the planning commission -- after the long, drawn-out deliberations by this ad hoc committee, they presented some recommendations to Council.

Council then submitted something to the planning commission to publicly review and hold a public hearing on the proposed changes. So I know there was certainly a public hearing held. And I know that we got written reports from that committee documenting the pros and cons of the changes in the cutting ordinance. I don't have those documents, but --

Q. As you have sort of gone through this, the process of evaluating the accreted land and also sort of educating yourself about the history of it in conjunction with this lawsuit, for example, have you come across any written findings of fact made by Town Council prior to enacting changes to the zoning ordinances affecting the accreted land since 1991 to date?

A. Again, I don't know what documents there were for the 1995. But I'm sure that for the 2005 change, that when we passed an ordinance -- Council ordinance to change the cutting portion of the zoning ordinance, that there were findings of fact that accompanied that, as we always have prepared by our attorney.

Q. Okay.

A. I mean, again, at that time, recall we were liberalizing the cutting that was permitted. In 2005, we were.

Q. As you -- as you sit here today, do you know one way or another whether there is, you know, the specifically enumerated findings of fact or not? Is that something that we just need to dig up?

A. I would dig around. I mean, I -- remember, we are looking at 19 years' worth of history.

Q. Yeah. I'm not faulting you if you don't remember. I'm just trying to figure out if you do remember it or if you don't remember it.

A. Yeah. I -- I don't remember presenting or crafting a specific document that said, okay, we're going to build a handicap ramp, so we're

going to post this on the website, you know, or whatever. But obviously, if we were getting funds, we had to provide narrative for that, which I'm sure would have covered impact to the land.

Q. As you think back to, you know, any type of change or ordinance or motion that was considered by the Council when you have been serving related to the accreted land, do you -- do you have any recollection of dealing with this sort of a cumbersome process that we've gone through here today? Or has this sort of been an educational process for you?

A. Has today been educational?

Q. What we just talked about.

A. Oh, okay. I was going to say today has been very educational, but --

I don't recall going through this line by line, to be honest.

Q. Okay.

A. I don't think anybody would argue that we've not accomplished, in essence, what it requires.

Q. I think that's my dog-eared page. I think you've already seen it. But before I hand it to you, let me mark it as an exhibit. Because I

don't think it's contained in the packet I gave you.

(O'NEIL EXH. 5, E-mail/Download: History of Accreted Land, was marked for identification.)

BY MR. JAMES HOOD:

Q. I hand you what we've marked as Exhibit 5.

A. You want this back? Or --

Q. You just hold onto that. I have got some other stuff.

A. All right.

Q. If you would look at the dog-eared page of Exhibit 5 --

A. Okay.

Q. -- this is Page 4 of 9. Read that, the highlighted paragraph. I mean, if you need to put it into context, take your time.

A. I think this was in what you gave us. And then I recall looking at it at lunch, as I wasn't sure what the document was --

Q. Okay.

A. -- who wrote it and when it was written and exactly what it concerned.

Q. All right. Well, we'll get to that. I

thought I gave it to you, but --
A. You gave me -- but what you gave me just didn't have all of the pages. And it didn't have Page 1 here as a whatever by whatever.
Q. Yeah. We'll take a -- I'll get him to go off the record, give you a minute to put it in context so you don't have to sit there and read it with the camera staring at you.
A. Well, I don't care if the camera doesn't mind.
Q. All right. Well, we'll sit tight and let you look at it.
A. It's the history of the accreted land written in '95 or '96, but we don't know by whom. Okay. So the part in question that you have -- okay. I have read that.
Q. Okay. This purports to be a quote from the Mayor Anderegg.
A. Correct.
Q. And in his statement -- I don't have it. What does it say?
A. Here, I'll let you read it.
Q. It says: To Mayor Melvin Anderegg, however, scenic enhancement means getting a better view of the ocean. He said many people owning

front beach property pay a high price for property and should be allowed to cut back growth. The whole purpose of having beachfront property is to have a view of the ocean, he said. And it's cited in the Post & Courier, March 28, 1991.
Do you see that?
A. I do.
Q. Okay. Do you agree with that statement?
A. No.
Q. Why not?
A. I don't agree that that's necessarily what scenic enhancement means. I agree that people owning front beach property pay a high price, as do people owning any property on the island. I don't agree that they should necessarily be allowed to cut back growth. And his last sentence, I don't know that I agree or don't -- disagree with it. It depends again on -- to sound like what -- what it is meaning, it sounds like the meaning of front beach. It depends on that.
(Off-the-record discussion.)
BY MR. JAMES HOOD:
Q. Look in your -- the notebook there. Let me take this from you and give this to the

court reporter. I'm going to get you to flip to Tab 4 -- Exhibit 4 to the Amended Complaint.
A. Okay. This is the summary of deed restrictions? Is that the document?
Q. Correct.
A. Okay.
Q. Have you seen this before?
A. No.
MR. HAIR: I don't think I have -- Exhibit 4 to the Amended Complaint?
MR. JAMES HOOD: Yeah.
MR. HAIR: I have got Attachment 4 instead of Exhibit 4. I wonder if I --
BY MR. JAMES HOOD:
Q. So are you taking a look at Exhibit 4?
A. I'm just now starting to look at it. Is there a particular part of it you want me to look at?
Q. Well, my first question is going to be if you have ever seen it, if you're familiar --
A. Nope.
Q. -- with the summary deed of restrictions?
A. I have not seen this document.
Q. I'm just trying to figure out who

created it. It looks like at the bottom, there's a footer on it that says Sullivan's Island --
A. June 203 -- 2003
Q. Right. Then it says MMW. I don't know if that's a person.
A. It looks like it's a document of the -- of and I guess by the Land Trust? Is that correct?
Q. I have no idea.
MR. BARNES: That's correct.
(Off-the-record discussion.)
BY MR. JAMES HOOD:
Q. If you're not familiar with it, let's just keep moving.
A. Okay.
Q. Take a look at Exhibit 5, the first Amended Complaint. Have you seen this aerial photograph?
A. I have seen a number of aerial photographs. And color reproduction is always so inconsistent, I'm never sure if I have seen that exact one before or not.
Q. Okay. Looking at Exhibit 5 on the front beach there, right in front of or between the -- the fort and the school, you see the red area, where your finger is?

A. Yeah.
Q. That -- that looks to be the forested area?
A. Not this.
Q. This area here (indicating).
A. No. I -- I --
Q. Do you know what the red area is on that picture between D and E, where the red line is marked?
A. "D," I think could easily be forested area, and moving into "C" part of that. But you have got what clearly look to be rows of platted property, maybe with houses on them, going eastward from there.
Q. Okay.
A. I'm trying to locate Middle Street, but it's a challenge. I'm not sure what's houses and what's forested area. But this area here (indicating), and I'm pointing to what looks to be a little east of what I'm assuming is either Station 16 or 17, to me looking at it right now, it just looks like lots. But I could be wrong about that.
Q. Okay. Do you see any forested area in the portion denoted as "A" in Exhibit 5?

A. I don't. But again, I mean, the reproduction quality on this and/or the original photograph quality is poor.
Q. Okay. Let's look at Exhibit 6 to the Amended Complaint there, some little closer pictures of Area A.
A. Uh-huh. Okay.
Q. As you flip through those photographs --
A. Again, I couldn't locate it. But what about it?
Q. -- do you see any of the -- up through Picture 6D, do you see any forested areas, you know, up in what we're now calling accreted land?
A. I'm not sure what I'm looking at here, whether that's forested, grassland, or what. It's impossible to tell.
Q. Which picture are you looking at there?
A. I'm looking at 6B. The same is true for 6C. I can't tell -- I can't tell what that is. It's obviously accreted land, and it appears to be non-sand that you are seeing. But I can't tell what it is.
Q. Now look at 6E.
A. 6E? Okay.

Q. Does this help clarify what you saw in that aerial photograph?
A. Yeah. This looks like the area which was to the right, the fourth section. This looks like parts of D and C to me.
Q. If you flip to 6J, I think you can see the causeway in that picture.
A. Okay.
Q. Helps you clarify some of those darker areas that you had previously seen --
A. Uh-huh. Uh-huh.
Q. -- that look like half-filled gullies. Do you see those?
A. That is gullies.
Q. Right.
A. Yeah. That looks like -- that's clearly vegetation here (indicating). And I guess this is too. I'm not sure. Okay. I see the gullies now.
Q. Do you have any idea what that vegetation looked like, that you are pointing to in 6 -- in the green portions of 6J?
A. I really don't. Were these all taken in October of '89?
Q. You'll have to ask the Town.

A. Like the big -- the big photograph, the main aerial view you have in your Exhibit 5, says October '89. So if these are all from the same shoot --
Q. I don't know whether -- if they are or not.
A. That shows us what the island looks like after a really bad hurricane.
Q. Look at Tab 7. That's in front of the Bluesteins' house.
A. Okay. All right.
Q. Would you look at the pictures that are -- they are located on 7 to the First Amended Complaint. How would you describe the vegetation that you see there in front of the Bluesteins' house?
A. Some of this is what they -- what the consultants have described as grassland. And some looks like shrub area.
MR. HAIR: I'm sorry. What pictures are we talking about?
MR. JAMES HOOD: 7.
THE WITNESS: Tab 7.
BY MR. JAMES HOOD: Exhibit 7, to the First Amended Complaint.

BY MR. JAMES HOOD:

Q. And as you -- you look through, for example, the photographs that we've just been thumbing through, Exhibits 6 and 7 to the Amended Complaint, are those the types of photographs that you have been provided to evaluate the condition of the accreted land in '91 to determine whether it's being maintained in the state it was in '91?

A. I don't know that these are the ones that we received or not. These look like they are from other sources.

Q. And I don't mean these particular pictures. I mean pictures --

A. The aerial photos --

Q. -- such as these.

A. -- and such? I know there was -- there were photographs taken, I believe at the time of the transfer with the Land Trust. But -- and I have seen them at some point in the last year, but I don't remember where or who took them. But I know there were photographs taken.

Q. Okay. Is there any sort of photo study that y'all do to maybe go to the same places and take pictures in the same directions on a regular basis to monitor the -- the status of the accreted

land and the vegetation therein?

A. Not systemically.

Q. You mentioned you went to Mr. McCutchen's house. Hold on. Let me go through the pictures. Would you look at Tab 16 to the exhibit -- excuse me -- to the First Amended Complaint? It is Exhibit 16.

A. Uh-huh. Proposed survey?

Q. Is this a survey that was ever disseminated?

A. Not to my knowledge. Not by the Town.

Q. Have you ever seen this?

A. I saw it today, and I really can't say that I've seen it before. I can't say with definite -- you know, with conviction that I have never seen it, but I have no recollection of ever seeing it. I don't know who -- who composed it.

Q. Okay. Since the Council didn't vote to change the survey we talked about, who authorized Lisa Darrow to change the survey to the version that was disseminated at the Town meeting?

A. I imagine that was Andy, but you would have to ask him.

Q. Let's go to 5416 on Exhibit 1.

A. Got it.

Q. All right. There's actually -- the page behind it, if you need it for reference, looks like a August -- in the middle of that Page 5417 -- August 31st, 2009 e-mail from Tim Kana --

A. Uh-huh.

Q. -- Andy Benke. Have you read that?

A. The middle part there from Kana?

Q. Yeah.

A. Okay.

Q. That e-mail was forwarded to you by Benke.

A. Okay.

Q. You see that?

A. Yes.

Q. Why would he just be forwarding that to you instead of all Council?

A. I assume because I'm chair of the real estate committee. And I would have been the first one to begin to figure out how we wanted to approach this.

Q. I was under the impression that the real estate committee had not done anything independent of the full Council on this, based on your prior testimony.

A. Well, I'm not doing anything

independent. I'm trying to facilitate Council and the real estate committee acting as they should. And you typically start with a committee chair and say, do we need to have a meeting about this -- if you are Andy -- how do you want to proceed with this?

Q. What did you mean when you told Andy, thanks, we need to avoid a tie?

A. Kana had said if Council was split half in half, that they -- meaning Kana and them -- would be the tiebreaker. And I said we should avoid a tie.

Q. Well, he says he -- they're not going to serve as the tiebreaker, but they have the opportunity to cast the tiebreaker in the recommended plan.

A. Well, okay.

Q. And what did you understand that to mean?

A. Just what I said. They would be the tiebreaker. They would make the -- they'd break the tie.

Q. When you asked if you were going to have a special meeting to discuss this issue, what were you referencing?

A. Council having a special meeting direct -- specifically and exclusively devoted to the land management plan. And as you see then, to your point about why he's just sending anything to me, we're talking about what do we put on the agenda for the real estate committee. And then we said we wanted to put it on that agenda, so we would discuss whether to have a special meeting. And we were letting people know on Council. I suggested to let them know in advance so they can bring their schedule information.

Q. Is that normally how the information is disseminated?

A. That's one way.

Q. Okay. What are the other ways?

A. Telephone conversations, I guess. By -- by information, you mean here's what we might talk about at the meeting, bring your calendar?

Q. Well, I mean more than that is -- you are getting input from Tim Kana telling you that in the event of a tie, cast the tiebreaker. And you're telling Andy, we need to avoid a tie.

I mean, is it normal to have that sort of discussion between you and the administrator?

A. That was a random comment. I don't

think it had any substance to it, other than to say we should arrive at a position that most of Council could sign onto. That's an appropriate thing for the administrator and I to discuss, in my view. Not what the decision would be, but the desirability that Council have a decision that most of them can embrace.

Q. It looked like at the bottom of 5417 -- and it's cut off -- but Benke writes to -- to Tim: There are 180 replies. Lisa and I will be compiling a summary of the replies early this week. We'll send you a copy of the summaries and actual replies.

A. Uh-huh.

Q. Do you recall getting the summary and the actual replies?

A. I -- as I said earlier, I have seen some responses and feedback from that, but I don't recall whether I saw a formal summary or not. If there were one, we probably circulated it to all of Council, in which case I saw it and forgot it by this point.

Q. Did you not want the consultants recommending the sort of tiebreaker dye, or casting the tiebreaker?

A. I thought it was most -- more appropriate for Council to arrive at a decision.

Q. And why is that?

A. Because that's what we're elected to do. The role of the consultants was to provide maybe some recommendations, provide us with information on which to make our final decision. But our job is to make the decision. And my point was I would hate to see a 3:4, very contentious kind of product.

Q. Okay. Look at Page 8901 on Exhibit 1.

A. Okay.

Q. February 19th -- this is back in '08.

A. Uh-huh.

Q. You're getting an e-mail from Andy. You respond to it: Very quick skimming suggests more than 40 percent of budget is for their favorite things.

What are you referring to there?

A. I think that was the proposed breakdown of the budget and budgeted effort that was presented to us by Kana when they were -- I don't know if this was in the course of doing the actual contract. I guess it probably was at that time. And I think that what I meant was that they seemed

to be devoting an inordinate amount of effort and budget to things that, to an extent, that we were -- items that were not a major emphasis of our intent when we put out the scope.

Q. What specifically are you -- are you referring to?

A. I don't remember specifically, but I think I was -- I think he was trying to emphasize a whole lot more of studies of wave motion and things more related to beach renourishment than to the management of the vegetation.

Q. And so the beach renourishment, that's what we had -- you discussed earlier --

A. Well, you know, things like he wanted to build a dune down the middle of the accreted land, an artificial dune.

Q. And then in the second paragraph, you say: Frankly, I say the -- the hell with them, based on chronic nonresponsiveness and inability to learn.

A. Right.

Q. What are you referring to?

A. I think at that point we -- and I think there were a couple of us, one or two of us, on Council and Andy who, at the direction of the

mayor, at least, met with Dr. Kana to try to help him understand better what the project was about. Because it was apparent from the very beginning that he really wanted to overemphasize things that we had not intended to spend much effort or money on studying. Again, the thing of the coastal processes, erosion, accretion, things like that.

And we told him repeatedly what we are primarily interested in is what happens landward of the primary dune line, not seaward of it. And he was emphasizing too much what took place on the beach and the contiguous ocean. And we had given him feedback to that effect, as we reported to Council on a couple of occasions. And it didn't seem to be taking.

Q. And that's what the inability to learn is referring to?

A. Uh-huh. Uh-huh.

Q. And what about the unresponsiveness? That's just not responding to your criticism?

A. I -- I don't know that I meant not answering e-mails. I think I meant not changing what he proposed, based on what we had told him.

Q. Look at 8959.

A. Okay.

Q. February 12th, 2008 e-mail. The subject is: Hold for Coastal Science & Engineering, Tim Kana.

A. Uh-huh.

Q. You're writing to Andy Benke?

A. Uh-huh.

Q. Interesting meeting -- meeting today. I'm pretty busy Wednesday, but try to get me if you get a moment. Very interested in your reactions. Attached, I think, shows what Tim does. And based on today, I would say he does it whether requested or not.

A. Uh-huh.

Q. What are you referring to?

A. Oh, if I had to guess, I would say that that would have been one of the meetings I told you about that a couple of us had with Dr. Kana, trying to help him produce what we had -- at that point, trying to help him understand what it was we wanted him to produce as opposed to what he wanted to produce.

Q. Were you opposed to retaining Kana?

A. He was not my first choice. I don't remember where I ranked him personally. We had -- I think I mentioned earlier we had a meeting where

we -- we initially reviewed all the -- all the applications that came in. We, meaning Council. I think we selected our top three, four, five, six for -- to bring in for interviews.

So we then had a day when we interviewed those, you know, upper echelon applicants. And then we evaluated them and, I think, came up with some rating or ranking system. He was not my first pick. But it was the consensus -- he was the consensus -- not consensus, but he was the majority choice of Council.

And then in my role with the real estate committee, my job was to try to make it work. Whether he was my pick or not, it didn't matter.

Q. All right. When you say, I say he does it whether requested or not, what are you referencing there? Is that the work or inclusion of things that -- that he's not supposed to include? Or work in -- the scope creep?

A. I think this was his presentation about his proposed -- or accomplished work with the beach renourishment project at Wild Dunes. And I don't have any idea how I came into this e-mail from Jan Landry. But as I recall, I mean, he was talking

about doing beach renourishment, moving sand. And as I said on a number of occasions -- on a number of occasions, that's -- I mean, that's his primary work. That's his specialty area, not management of wildlife and vegetation.

Q. Is that one of the reasons why you didn't rank him --

A. Yeah.

Q. -- at the top?

A. Yeah. I mean, I didn't think he was a bad person. I didn't think he was bad at what he typically does. It just didn't seem to be a great match of expertise for the job.

Q. Looking at 4135 --

A. I have it.

Q. -- this is this past April?

A. I'm sorry.

Q. This was this past April?

A. Yeah.

Q. Do you remember what article this is referencing?

A. I don't. I don't. It must have been -- I don't know if it's something Kana sent to Andy, some news service article, but I don't recall what it was about. I just don't remember.

MR. JAMES HOOD: Okay. Walker, will you pull that for me?

MR. BARNES: You know, I don't think -- I don't think they produced that article.

MR. JAMES HOOD: Okay.

BY MR. JAMES HOOD:

Q. The -- when you wrote the note, as always, all about the money, what are you referring to?

A. Something in that article, I guess.

Q. Did it have to do with Kana?

A. I don't think the article was about him. I could be wrong. I mean, Kana sent it to Andy, so I doubt it was about Kana.

Q. What does that top sentence mean there, the protection of natural areas first priority unless it against to conflict with economic factors?

A. I -- I don't know. That was Mike Perkis's sentence.

Q. Are they talking about economic factors as it impacts property values in a coastal management?

A. I don't have any idea.

Q. Do you get a sense that Tim Kana has

a -- sort of a knack for pushing to -- to do things that perhaps are more influenced by economic factors rather than more environmental factors?

A. I have not said that. I don't know that that's the case.

Q. I'm not asking if you said it. I'm asking you if that's an opinion that you hold.

A. I don't necessarily think that.

Q. When you say "not necessarily," tell me what you mean.

A. Just what I said.

Q. What was the purpose of hiring Coastal Science & Engineering?

A. Does the question mean what was the person -- the purpose of hiring their team specifically? Or what was the purpose of hiring a consulting team, which wound up being them?

Q. A consultant team that wound up being them. You told me about the --

A. Uh-huh.

Q. -- sort of the selection process.

A. Okay. All right.

Q. So what was the purpose of --

A. So how did we get into that to start with?

Q. Yeah.

A. I don't remember exactly how it started. There had been a prior effort to get some scientific advice about that land. Several -- a few years prior to that, the Town had done a pretty low-budget contract with a professor at the College of Charleston to study the land, basically tell us what we have there.

And I think most of the discussions would start out with that saying, you know, we don't even know what is there, so how do we know how to manage it? And this produced a much-delayed report from this professor, which Town Council got. And then some members felt it wasn't completely satisfactory because at -- in some point of that report, that consultant had kind of gone off scope and started offering a number of what seemed to be more opinions in just the opposite direction, opinions in the direction of do nothing, keep it completely natural, or things to that effect.

So there was several people on Council, I believe, who didn't think that was something we should base management of such an important resource on. How and when exactly we decided let's get some consultants, I can't tell you. I mean,

we've done it for other big hot-button items on the island as well. We've done it recently for a commercial district, and we had done it previously for the revamp of our overall zoning ordinances.

Q. Was the goal protecting the accreted land or protecting the -- the island from the effects of a hurricane?

A. I think the goal was to determine how best to manage that accreted land. And we -- and we assumed that that accreted land, if managed properly, will offer substantial protection against storm surge.

Q. Are you aware of any ordinances or rules that deal with trimming or cutting of trees on your own property?

A. Sure. We do have a tree ordinance.

Q. Okay. And what -- you have got like a size limit or something?

A. Yeah. If it's above a certain diameter, breast height, you have to get a permit to cut it. And there's a threshold by -- where you have to replace the tree either with like kind or other kind or about money to the tree fund of the Town.

Q. Do you agree with the statement: The

Town also recognizes that the beach and ocean scenic views and ocean breezes inside and outside the accreted land are natural resources and valuable assets of Sullivan's Island?

A. It was either that statement or something similar to it that was in the final set of principles and guidelines that we adopted that I agreed with. I don't remember if it was that specific wording or not.

Q. But what I just read to you, is that a statement that you agree with?

A. Read it again, please.

Q. Yeah. The Town also recognizes that the beach and ocean scenic views and ocean breezes inside and outside the accreted land are natural resources and valuable assets of Sullivan's Island.

A. I think I would agree to that.

Q. Are you a member of any civic organizations?

A. Locally? No.

Q. Or not locally.

A. I'm a member of professional organizations.

Q. Okay. Are you a member of a group known as Sullivan's Islanders?

A. No, I'm not, but I'm supportive of their efforts. But I'm not a member specifically. I don't know what their membership process is. I mean, it may be they can declare people to be members, but I -- in fact, I told them I wanted to be on their mailing list, but I explicitly did not wish to be a member.

Q. And why is that?

A. I didn't want it to appear that there would be a pronounced conflict of interest in this matter.

Q. What would the --

A. People get identified in this issue as, you know, being all on one side or all on the other.

Q. You see I'm flipping these pages? They are pages of questions that I'm not asking you.

A. God bless you. Flip on. Looks like you have got a lot of flipping to do.

Q. What was the -- the reason for the rejection of Option 4 from the consultants, where they build the dune. What was the -- the rationale there?

A. There was very widespread opposition to that from a lot of the citizens and several of us

on Council as well. That was the thing that drew the most fire, I believe, of the original --

It was certainly not in keeping with the intent of the consultancy. And we did not believe necessarily it was in keeping with the intent of the Land Trust restrictions. And it would cost a ton of money.

Q. What about the proposal of one of the residents to -- to pay for the creation of the dune at -- at his expense, at the expense of the front beach owners?

A. Well, a part of that -- I don't think it went very far. Again, I think in general most of us on Council were opposed to any sort of an artificial dune in there which would require that substantial amount of disruption of the topography. I personally also have a problem with asking people who happen to live next to that property to bear a greater share of the cost of managing it. If we're going to assume control -- greater control of it, I think it needs to be the Town's responsibility.

Q. I read a newspaper article recently in the Island Eye News where reference was made to cancellation of tennis court repairs, firework displays, trash collection, and reduction in the

police force. Are you familiar with what I'm referring to?

A. There's been some discussion on several Town Council meetings which was related, I guess, in that article to the costs to the Town of defending itself in this lawsuit and the fact that the money would have to come from somewhere.

Q. Has the Town undertaken any effort to cancel any tennis court repairs?

A. We've not made any decisions at this time about what actions we'll have to take in order to free up the resources to pay for the defense of this, of the Town in this suit.

Q. Okay. So to say that any of those items have been planned or are planned is not accurate. Is that fair to say?

A. It's accurate to state that those are among a list of items that were presented by, I think, Mr. Perkis, chair of the ways and means committee, after going over the budget information with the Town comptroller and the Town administrator. You know, the idea is where are you going to find some money? What you going to cut?

And he said there's -- you know, we've looked for items that possibly could be cut without

drastically disrupting the activity and the functioning of the Town. Those were possibilities and examples.

Q. Were those things that had been discussed at a Council meeting, those specific examples?

A. They -- they were discussed at a Council meeting. Right.

Q. Any discussion to delaying the acquisition of new four-wheel-drive vehicles for the law enforcement officers to drive?

A. I don't know. I don't know if that was one of them or not. Whatever you have got in that list is whatever we were told. And I don't think it was necessarily meant to be an all-inclusive list.

Q. Do you know what the -- I mean, did you talk to Mike Perkis about his comments to the -- to the newspaper in the context in which they came up?

A. We've talked about the issue of where are we going to find the money. I don't remember talking to him specifically about his conversation with whoever that was at the Island Eye.

Q. 6644.

A. Got it.

Q. Tommy Hartnett's letter is the same old collection of illogic that he presented.

A. Uh-huh.

Q. What does that mean?

A. I saw this earlier today. Well, I don't have it in here, a copy of the letter itself. And I assume it's the same letter that you guys have presented us with in some other attachment if it arrived during this time period. And that was my view of it.

Q. Let me just -- I'll give it to you, for your reference, so you're not -- keep you in the dark. That's Exhibit 14 to the First Amended Complaint.

A. Yes, that's it. That's the one that -- okay.

Q. Tell me what is illogical about that to you.

A. Well, without reading it over, I just -- the arguments that --

The most illogical thing is the assumption that even if you were to accept the proposition that the front row properties would drop in value in absolute terms, he postulates a domino effect, where every -- the properties from

the back all are reduced in value. And I have no understanding of how that would happen. If -- if the front beach properties have lost -- have lost value -- if.

But if you accept his scenario there that they lose value because they have lost some of the benefits of being front beach, the people in second row haven't lost any benefits because they didn't have those benefits. And so this cascade of declining property values, I thought -- from the very first time I heard it -- didn't make any sense.

Q. Well, if the values -- well, would it make sense for a beachfront home or an ocean front home to be reduced in value and the second row home to be -- the value of second row homes to exceed front beach homes?

A. It depends on the home. If you are losing your value on the front row because you have lost some of the benefits of being front row, the people on the second row haven't lost any benefits because they didn't have your benefits.

Q. You don't recognize that the --

A. Your proportion has dropped relative to the other properties. That's what you're saying.

Q. I'm not saying anything.

A. Well, that's what other people have been saying.

Q. You don't accept that the values -- that the front beach -- the sale for those lots and houses drives the values on other parts of the island?

A. Not if they no longer have advantages from being front row. Then the playing field would be more level.

Q. Okay.

A. I don't think it's written anywhere that you have to pay your real estate values to the front row houses. I mean, values are determined on the basis of comparables, on the basis of value of desirability of the lot, and the value of desirability of the structure.

Q. In your opinion.

A. In my opinion. Thank you. I forgot that.

Q. Okay. Now, the -- anything else illogical about this, other than the domino effect?

A. That's the primary thing.

MR. JAMES HOOD: Let me -- let me take a quick break, hook up with these question writers,

and see if we can wrap this up.

THE WITNESS: Sounds good.

THE VIDEOGRAPHER: We will now go off the record. The time is approximately 5:37 p.m.

(A recess transpired.)

THE VIDEOGRAPHER: We'll now go back on the record. The time is approximately 5:50 p.m.

BY MR. JAMES HOOD:

Q. Mr. O'Neil, are you aware of anyone who has gone out and actually planted trees in the accreted land?

A. No.

Q. Has there ever been, to your knowledge, any effort to do so?

A. No.

Q. Let me get you to look at --

A. Let me rephrase that. There were -- there were -- let me change my answer. I believe that maybe with the -- under the sponsorship of the maintenance department, I believe some cedar trees were planted around Station 16, which would be in front of the fort, for Arbor Day some several years ago. I don't recall them at the time. I just have heard about it in the last year or so.

And as far as any other plantings, any of the previous plantings, that's the only one I'm aware of -- cyprus trees. Excuse me.

Q. There was reference to the buffer zone earlier. Is it fair to say that you agree that a buffer zone of between 75 and 90 feet would be appropriate between the adjacent land and the accreted land?

A. I don't know that it necessarily needs to be that long. I think that -- or that deep. I think the desirable and appropriate depth would depend on the part of the island that you are talking about and it would depend on exactly how we do a buffer zone.

If you are talking about a buffer zone where there is already a very highly -- or primarily mature forest, I don't know that the idea is that we would cut down 50-year or 60-year-old oak trees. But my idea would be that you can go in and thin out all the other understory so that you've got a much more open space there.

Q. Do you know when the -- let's see. Your house on Thompson Avenue, do you know when it was last appraised?

A. The last time that sort of wholesale

reappraisal was done. A couple, three, four years ago?

Q. Is that the one you are talking about through the countywide --

A. Yeah.

Q. -- reassessment?

A. Yeah, yeah. I think that -- I'm sorry. Reassessment. I think that's the last time it was --

Q. Have you had --

A. -- had an assessment change.

Q. Have you had your home appraised separately for any reason?

A. Not since whenever I last financed it, which I think I'm about 8 years into a 15-year note. So --

Q. Okay. From your house, you have a view of the water?

A. At high tide, I have a view of some of the water in Cove Creek; much less so at a low tide.

Q. All right.

A. And it's off in the distance in all cases, except when the tide's in my yard.

Q. All right. So let me back up. You

have a view of the salt marsh?

A. I do.

Q. Okay. Do you enjoy your view of the salt marsh?

A. I do.

Q. Do you believe your house's value is contingent upon whether there is a view of the salt marsh?

A. I believe it gets some increased value by virtue of having that view.

Q. Is there anything blocking your view of the salt marsh?

A. A couple of my trees.

Q. Has the Town or Town Council ever done anything to prevent you from having a view of the salt marsh?

A. No.

Q. Have you ever participated in any way in enacting regulations or ordinances which affect the trees and vegetation on your own property?

A. Other than protecting them, no.

Q. Have you ever participated in any way in enacting regulations or ordinances which affect your view of the salt marsh?

A. Nothing that affects mine more than

anyone else's. And I think I have participated in the -- whatever we've done with that -- it's called the RC2 area. It's the back beach area, as opposed to the RC1 on the front row, the front beach. And as a member of Council, I have participated in those deliberations after learning that I was a member of a large enough class that that was not inappropriate.

Q. How did you go about learning that?

A. From investigations. A few years -- a number of years ago, there was an issue about liberalizing the restrictions on length of docks. And I was at that time led to believe that there were a small number of lots on the back that would be able to have a dock if the Town liberalizing -- in other words, increased the permitted length of docks that could be built, increased it from whatever it is, 300, to something else.

And I was told by one of the proponents of that that there were only a small number of lots that would be impacted by that, that would then acquire the ability to have a dock. And so in consultation with the Town attorney and the state municipal association, I recused myself. I submitted a letter to the mayor outlining my

reasons for recusing myself from those discussions and that vote.

Q. And what ultimately was decided?

A. On that issue?

Q. Yeah.

A. That there was some sort of a compromise that really allowed about -- a very, very small number of people, a handful of people, to build docks, not including me.

Q. Does your property -- I mean, do you have the ability to build a dock, if you so choose?

A. No. Because of that regulation, restriction on length.

Q. Is the existence or the -- the ability to have a dock, is that a right or a privilege that is extended by the Town that's --

A. It's a privilege. You are going over somebody else's land.

Q. Is that a privilege that the Town could take away if it sought -- or thought that doing so is appropriate and for the best interest of the Town?

A. I don't know legally whether they could make somebody remove a dock that's currently legal. But if they wanted to become more restrictive in

where you could build a dock, I certainly think that's within the Town's authority.

Q. The -- the marsh around the island is property of the Town?

A. It varies. Most -- I think that's -- there is a giant plat, back of the island, that's owned by the Town.

Q. And the -- the -- it's your position the Town has the ability to manage and run its property as it sees fit and appropriate?

A. Yes.

Q. Have you ever cut down any trees on your property?

A. A cedar tree that was below the regulated protected diameter.

Q. Okay. When was that?

A. Oh, I don't know. Four or five years ago.

Q. And what was the reason for cutting that poor, helpless cedar tree down?

A. That poor, helpless cedar tree I put to death because it was interfering with my ability to get a little breeze. And mostly, it was impinging on some baccharis bushes and baccharis trees and an oak tree. It was crowded.

Q. Have you ever done anything to your property to improve your view of the salt marsh that we talked about?

A. Other than trimming my own trees, no.

Q. What about planting trees on your property? Is that anything you have done?

A. No. No. I have done very little planting since I've been there. Put in a bunch of bamboo around the house this summer.

Q. The trees that you cut, that's between you and the lot that got cleared next to you?

A. No.

Q. That's usually why --

A. Actually -- huh?

Q. That's usually why there's bamboo.

A. I'm sorry. Maybe I didn't hear your question. Say it again.

Q. Did you put the bamboo between your house and the adjacent lot that was cleared?

A. Oh. Part there and then part in the front.

Q. The trees that you are talking about trimming, were those trees on your property or Town property or right-a-way?

A. None were on Town property or

right-of-way. All but one were on my property, and that was with the permission of the owner. This was a giant mulberry tree that had one branch that was growing over my driveway and sinking daily, to the point where I was -- I had two different people bang the tops of their truck cabs on it. And it was done under a permit from the Town, by an authorized tree service.

Q. Have you done anything on your property -- excuse me -- to the Town's property or trees or vegetation that's adjacent to you to improve your view?

A. Have I done anything to Town property that's adjacent to mine to improve my view?

Q. Uh-huh.

A. No. You know, I'm expected to cut the right -- the grass on the right-a-way between my front yard and the street, which I do.

Q. What about permits? Have you ever applied for permits to cut trees or vegetation in your yard?

A. As I mentioned, for that work that I had done within the last year, I did. I was -- I got the permit for -- it was a combination of a mulberry tree and some other things to a cedar

which appeared to be in the process of self-destructing.

MR. HOOD: I was hoping to get it all done on this tape. Let's go ahead and switch tapes real quick.

THE VIDEOGRAPHER: This concludes Videotape Number 3 in the videotape deposition of Patrick O'Neil, Ph.D. The time is approximately 6 p.m. We'll now go off the record.

(Off-the-record discussion.)

THE VIDEOGRAPHER: We're now back on the record. Today's date is December 7th, 2010. The time is approximately 6:02 p.m. This is Tape Number 4 in the videotape deposition of Patrick O'Neil, Ph.D.

BY MR. JAMES HOOD:

Q. Do you believe that trees of forests, maritime forests, any type of forested areas should be promoted on the north side of Sullivan's Island, i.e., next to the properties adjacent to the Cove, such as your property?

A. That's literal land. It's marshland and not appropriate for things that aren't already growing there, which does include some cedar trees.

Q. How much money did you spend in '09 for

the beautification of your lot on Sullivan's Island?

A. In '09?

Q. Yes, sir.

A. The tree work, I had done this year. The bamboo went in this year. I had my front steps replaced, but that was like three or four years ago. I had those steps repainted and the front porch painted two or three years ago. So I don't know if -- you mean lawn-related?

Q. Yeah, the sort of --

A. Landscape stuff?

Q. Landscaping, trees, bushes?

A. In '09, probably nothing.

Q. Did you tell us about what happened in 2010?

A. I had that tree work done, and I bought my bamboo.

Q. If the Town of Sullivan's Island or anyone else, for that matter, erected a 15-foot high fence to the rear of your lot so you couldn't see the marsh, would you object to that?

A. Sure. I would object to it if they erected one in front of the houses on the front row.

Q. If the Town of Sullivan's Island or anyone else planted a row of 15-foot tall trees to the rear of your lot so you could not see the marsh, would you object to that?

A. Probably.

Q. And why?

A. Because it would be something that was inserted artificially.

Q. If there were, in fact, a row of 15-foot tall trees at the rear of your lot, do you think that would enhance the value of your property?

A. Probably not.

Q. Isn't it correct that you did not buy the marsh or any part of it?

A. There's actually a portion of my lot which is on the marsh side of the critical line and which looks like marsh and behaves like marsh.

Q. If on the other side of that critical line and that little piece of marsh that is apparently part of your plat, if a 15-foot high wall was built on the other side of that, you haven't lost anything, have you?

A. If it's built off of my -- I'm not following the question. I have got, say, a 25-foot

deep piece of marsh, which is the marsh-most end of my lot.

Q. Okay.

A. What's going up and where?

Q. If you put a 15-foot wall on the other end of that, so it's off of your property.

A. Sure. A 15-foot wall wouldn't enhance anybody's value, unless you are near an interstate.

Q. But if it did that, though, I mean, in that situation, you don't own the marsh beyond it, you haven't lost anything, have you?

A. I have not lost possession of anything.

Q. Have you lost any value?

A. I don't know. I doubt that having a 15-foot wall behind my property would add to its value. Those things are not seen as attractive on Sullivan's Island.

Q. What about a 15-foot wall of attractive trees that obstructed your view of the salt marsh?

A. I don't know. I don't know how that would impact house value. To -- to obstruct my view, they'd have to grow some more.

Q. When you bought your marsh lot, did you expect to have a marsh view?

A. Yes.

Q. When you purchased your marsh front lot, the price you paid reflected the fact that you had the marsh view. Do you agree with that?

A. I imagine.

Q. Do you have any way to quantify, you know, how much of your purchase price was allocated to the marsh view?

A. No, I can't. And you know, I mean, there's the issue of the marsh view; but there's also the issue of you know you're not going to have another house back there if you -- if what's back there is marsh. So the marsh enhances the value of the property in a number of ways, as do the protections on it.

Q. I think I showed you Exhibit Number 4, which was a list of endorsers. Does it have any impact or effect on you how you evaluate the accreted land management plan, knowing that over 200 residents agree with what the plaintiffs in this case have done? And that is ask the Court to void the ordinances back to '91.

A. Say the beginning of that again. I'm sorry.

Q. Yeah. I showed you that list that's

got --

A. Right. I know the list.

Q. All right. Well, I think it's somewhere around 200 or over 200 endorsers agreeing with what has been proposed in this lawsuit. And that is to -- asking the Court to void the ordinances post '91 regarding the vegetation cutting.

A. Uh-huh.

Q. Does knowing that there are that many island supporters of that requested relief have any impact on your evaluation of how to look at the accreted land management?

A. Well, I mean, that's clearly a portion of the people on the island and I think, you know, their sentiments deserve every bit as much consideration of those of any other island resident. My understanding is that on some of the -- some of the people on that list may not be island full-time residents, but property owners. And so I'm not -- I would not take however many it is as an exact number. I would -- if there's 200 names on there, I would not say 200 island residents favor this completely.

I do hear anecdotes here and there of

people engaged in conversation, not by me, who signed off on that; and somebody says, I'm surprised to see that you signed off on that; and they express surprise that, you know, they really were signing off on what they signed off on. I guess they just didn't read it carefully.

Q. You draw this distinction between island residents and property owners. And what distinction is that that you draw there?

A. Well, we represent the citizens of Sullivan's Island primarily.

Q. Okay. As opposed to property owners?

A. Nonresident property owners.

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. So to be clear then, you as a Town Council member represent the island residents as opposed to non-island residents who are just property owners on Sullivan's Island?

A. Well, I -- I think our first and highest accountability is to the residents and voters of the island. That doesn't mean that we don't take into account what property owners' sentiments are. They certainly have a stake in the island.

(Off-the-record discussion.)
BY MR. JAMES HOOD:
Q. The -- yeah. The Sullivan's Islanders group that was referenced earlier, did -- did they provide you with a -- a list of names of their supporters or anything to that effect?
A. No. I don't recall getting any sort of a membership list.
Q. Did you have a -- a campaign disclosure?
A. Sure.
Q. Okay. And when did you file that?
A. I file them when they're required.
Q. And your campaign disclosure identified all your campaign contributors?
A. That's correct.
Q. Do you accept campaign contributions from people who are not residents, but are property owners?
A. Yes.
Q. Do you accept contributions from people who are neither island residents nor property owners?
A. It's a really short list of people. You would think I would remember, but I don't

recall any of them being neither residents nor property owners. And I don't solicit campaign contributions from anyone.
Q. On the -- the process where you are currently in the evaluation of accreted land, what is the work that remains to be done, from Council's perspective?
A. Well, the next step, as I mentioned earlier, is we are supposed to each of us individually submit to the Town administrator bullet-type comments about the different management elements for each of the four management units. They -- they've divided that, you know, land into basically four units. One or two are subdivided, but basically four.
And we're to use a format that Andy Benke has devised to submit bulleted comments about our views; either, you know, good, bad, don't care, ought to change it to this. Buffer zone should be bigger. Buffer zone should be smaller. Those kinds of things. We're supposed to submit those to Mr. Benke.
And he is to compile them so that we can review them prior to our January committee meeting, at which time we'll go over them in the

open meeting of committees and hash out what we think as a group and see which points we can come to an agreement on and which points we differ on, which points -- I mean, hopefully we'll come up with some ideas in the process of doing that that maybe we haven't had before we walk into that room.
Q. Then after that process is completed, what's the -- the next step in the --
A. What -- what I would hope would be the next step or there -- would be that we would then roll it out and do another town public meeting, to where we present them the general plan that Council believes is appropriate. Whether we would want to do that before we would send it to the planning commission, I don't know.
The planning commission obviously will be obligated to hold a public hearing on them as well. Because again, these will be changes in the zoning ordinance. And possibly at some point before I'm 96, we'll have a plan.
Q. When is the -- the time for the inclusion of the discussion of the economic impact to the homeowners, to the property values, to the Town, to the County? When is all of that interjected into the process?

A. I think that will come up in Council discussions, and it can come up in comments from the public during whichever -- however many public hearings we have.
Q. Do you anticipate preparing written findings of fact in accordance with the deed that we went through earlier today, about the proposed action that is ultimately reached by Council?
A. Well, I think ultimately we'll have to do that. I don't know which point in that process we do it, whether it happens before we send it to planning, whether planning helps us to compile those and helps us after they have their public hearing in making that determination.
Q. Before spending the resources, time, and money on this project, why would -- would you not simultaneously evaluate the economic impact in the event that its so great that the plan being suggested is unwarranted and unworkable?
A. Well, that's -- coming into this, I mean, by that, do you mean explicitly retaining some expert in property appraisals?
Q. No. I mean, from our discussion today, I'm under the impression that thus far, Council has not considered the economic impact of the accreted

land management plan. In other words --
A. I don't know that that's completed accurate at this time. What we were talking about earlier was a public meeting that was held however long ago, where we wanted to limit the focus of that meeting. But we've heard a lot from people in this room and elsewhere about economic impact, and I think it's something that will be part of the discussion. I don't know that we necessarily have to go out and retain somebody and pay somebody else some money to help us gauge that.
Q. Do you remember our dialogue -- it's been some time -- but the question was: Thus far, Council has not taken into account financial considerations?
A. Uh-huh.
Q. I mean, I --
A. If I -- well, if I had said thus far, I was referring to going out and explicitly saying, okay, world, what do you think about the economic impact of this?
Q. Well, then I want to make sure we're clear. I mean, tell me what economic analysis has been done by you or Council or administration related to the potential ramifications of the

accreted land management plan.
A. We've not gone out and commissioned a systematic study, nor have I thought it appropriate to do so.
Q. Really, what I'm looking for is not what you haven't done. But your answer to my question a moment ago leads me to believe that the economic issues have been considered. So I would like to know --
A. Well, they have been discussed and considered in that overall discussion.
Q. When was that? At the meeting?
A. All since those -- since the meeting. We got feedback from people with the feedback forms raising the issue. I mean, if you are saying have we had a special session to talk about the economic impact, no.
Q. Yeah. I mean, I -- say I'm just --
A. Do we need to? I say no.
Q. Okay.
A. It doesn't mean we don't value that as a consideration, but there's a lot of ways to assess the impact of things and to consider them.
Q. Didn't you direct someone to remove the reference to property values from the questionnaire

prior to the Town Council meeting?
A. I think I answered that several times already with describing -- by describing the process by which Council discussed that issue and instructed the Town administrator to find out from the consultants whether they were prepared to back up any analyses that they wished to put forward. They chose not to, and so we removed it from the presentation and from the form.
Q. Well, Council has to speak through a human. Do you agree with that? I mean, Council can't speak. I mean, Council is made up of individuals; and one of those individuals need to speak for Council.
A. Right.
Q. Who was the mouth of Council that told this to Andy Benke, that needed to pass it on?
A. Well, Andy was in the room during the discussion with Council.
Q. Did you ever have a conversation with Tim Kana that the property values should not be considered?
A. I think when he was in the room during the Council meeting, where he was making a presentation, I said that as part of that meeting

and part of that discussion. That was my opinion. That was not an instruction to him.
Q. Was that in the context of the dialogue or the discussion amongst Council? Or was that --
A. Yes.
Q. -- privately between you and Kana?
A. No. No. That was in the context of the Council discussion.
Q. And which meeting are you referring to?
A. I don't remember the date.
Q. Was it a public meeting?
A. Yes. Actually, you could probably figure back from those -- was it April 22nd of '09 e-mails? Remember I said I think that was the day after the discussion. So I would guess that's the meeting, but I'm not sure.
Q. All right. So you did tell Kana that property values should not be considered.
A. I said at the meeting that I did not think they should be considered. Whether I was directing that comment to him or my fellow Council members, I don't remember. He was there, they were there, and I was there.
Q. Was there anyone else at Town Council who iterated that same sentiment to Kana?

A. Well again, I don't know whether I said it to him or in his presence to the other members of Council. But there were other members who agreed with my position on that.

Q. Did their agreement come out in the form of a verbalization of agreement? Or was that something that -- that you knew in your heart that they agreed with what you were telling Kana?

A. I don't make any suppositions about what I know in my heart about other people. They said it. Mike Perkis said it. Either -- I think he was at that meeting -- I think Carl Smith agreed. I don't remember what Mary Jane said at the meeting. As you see in her e-mail, she was opposed to including it.

Q. Okay. Why, then, would the e-mails that we discussed reflect that it was decided to leave the report as it was at the Council meeting?

A. I don't remember the specific e-mails talking about that. But again, there's a difference between what's in the report and what was presented at that meeting. If you're talking about it being left in the final draft, I assume that that was their take on what we sent them in our principles. There had been a lot of

discussion, obviously, at that point.

Q. The e-mails I'm referring to are on Page 9404.

A. The e-mail from Jerry Kaynard?

Q. Correct. Where he says that Council discussed this at the presentation and decided to leave the report as presented, that does not sound like other members of Council agreed that property values should be taken out as you just mentioned.

A. Well, that -- I'm not sure that that was the same recollection I had about the outcome of that meeting. I could be wrong. So could Mr. Kaynard. I don't know. I mean, I'm just -- this is all based on memory. And we go into lengthy meetings with lots of discussion at times. Again, however, I would remind you if he literally meant the report and not the presentation about the report, that's probably an accurate statement.

Q. 10553 is your thread or your response to this chain.

A. 10553. What now?

Q. I think that's the same date.

A. Uh-huh. Yeah.

Q. If -- if your recollection was different, then why would you have not corrected

Mr. Kaynard and say that Council agreed and instructed Kana to keep property values out of it?

A. For one thing, I don't necessarily take issue with every -- in writing with every e-mail that I might find something that I disagree with.

Q. Okay. So --

A. And, you know, I have to say -- and I hope I said I thought the decision about letting it -- putting the decision back in his court was made at that meeting. It may have been made later. Again, it's not affecting an ordinance or anything. It had to do with a meeting agenda.

Q. But the -- the ordinances all stem from the public's ability to participate and be involved in a representative government. Right?

A. Sure.

Q. And the ability to do that is limited to the citizens when they don't have all of the information that is being considered and only being given the pieces of information that the representative body elects to provide them with.

A. Well, I think it's always the case that that body is going to decide the topics of meetings and the agenda for meetings. The report was available to anybody who wanted to see it, as it

was, the draft of it. No one was withholding information. The Town Council was utilizing its prerogative to set the agenda for a meeting it had called. And it was trying to schedule it to be informative.

Q. This was talking about a meeting that already had occurred, where that discussion had transpired.

A. The meeting of Council?

Q. The Council meeting --

A. Yeah. And I -- you know, I'm looking at this and I'm thinking maybe we didn't have complete agreement on that course that I mentioned. I know that was the final outcome.

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. I mean, if that's the case, wouldn't it behoove everyone, in the interest of full disclosure, to -- to have that opportunity made available to people if there is this confusion and disagreement about eliciting the input from the citizens?

A. You mean back then?

Q. Today.

A. What are you talking -- what are you --

what are you proposing?

Q. I'm saying that you're in the middle of a process about changing the property for 80-something front beach people that could have a serious impact on them. Changing the impact of the management of accreted land that will have an impact on all the residents of Sullivan's Island and the citizens of South Carolina. And that if what has happened so far is some confusion about the way the process has been handled because there's been some monkeying with the survey forms or the opinions and those opinions haven't been elicited, isn't now the time to get that opinions and that information so that you, as a member of Town Council, have all that information available to you to make a prudent, wise, well thought-out decision that considers all of the factors?

A. I don't know what you are referring to when you talk about monkeying with survey forms, for one thing. For another, we've been getting gobs of input from the folks that you are representing and the people that you've approached about supporting this lawsuit. We will continue to hear from those people. I don't think we have an obligation to resubmit a survey every time somebody

raises some other issue that they personally preferred to have included earlier.

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. And the term "monkeying," by the way, was referenced in 9405 with Mr. Presson, was in an e-mail that was sent to you, when he gets -- makes the reference, I think we'll get into more trouble for monkeying with the report than by leaving the info in.

A. That's Mr. Presson's language.

Q. Okay. Now, there were other members of Council who disagreed with your assessment.

A. Of course.

Q. And if the disagreement is simply focused on whether to include one more element into consideration, which is property values, why does it not behoove Council as a whole to err on the side of caution and get as much information as possible?

A. I'm sorry. Was there more to the question?

Q. Not yet. There will be. You can keep thinking.

A. Okay. I got distracted. Say it again.

Q. Sure. If there's a disagreement of Council to the point where Council does not have an agreement -- I mean, the way you have described it to me is that Council was divided on the issue and that Council communicated to Benke that he needed to tell Kana that if he can't support property values, it shouldn't be considered, if he doesn't have the data to back it up.

Because there's no town action, there's no motion, there's no vote, there's no directive, and Town Council can't figure it out, why would Town Council not exercise the discretion to include that extra item, which is property values, in order to get all of the information to make an informed decision consistent with the fiduciary obligations of Council?

A. You need to understand this process is not frozen as of April the 22nd or the date of that meeting, whenever it was. And this was in '09. There's been a lot of activity since then. We met and deliberated at great length over the principles and guidelines that we submitted to the consultants. Those deliberations included a lot of discussion about the role of value and how to import it and how to approach it. That was

submitted to the consultants.

They submitted us their final draft report. As you saw, their final draft report does include their thoughts about property values. So it's not been closed out of the discussion. It's not been closed out of the progress since then, toward this. We've -- we have not forbad conversation about property values, if that's your insinuation.

Q. It's not -- I'm not trying to insinuate. I'm trying to say it.

A. Well, we've not.

Q. Has it been an item in a meeting, on the agenda, to talk about the effect on the economic impact for this accreted land management plan?

A. No. We've had the accreted land management plan on the agenda for a long period of time. We don't list any of the other elements on the -- on our meeting agendas.

Q. Has it been one of the talking points? Has it been discussion amongst Council and the public about the economic impact this will have on the homeowners, the property owners, the residents, and the people who own land adjacent to the

accreted land?
A. That's come up and throughout the discussions. I'm sure it will continue to come up.
(Off-the-record discussion.)
BY MR. JAMES HOOD:
Q. The other question I have is: If you are eliciting Town input -- resident input, then why -- and you're not allowing the consultants to explain property values, why did you --
A. At that meeting.
Q. At what point in time have the consultants presented any information to the public about the economic impact of this accreted land management plan?
A. It's in the report that's been on the website for a long time. It's publicly --
Q. I asked you --
A. -- available.
Q. The question I asked is: When was it presented?
A. They have not presented anything since we got the final draft.
Q. Is it --
A. To my knowledge. I may -- I may be wrong about that. They may have presented the

four-unit plan. I don't recall. What's the date of the final report that we got?
Q. July 15, 2010.
A. We had a meeting at Holy -- that was about paid parking. We've had a meeting at Holy Cross since then. I don't recall any other presentations by them in a public meeting.
Q. What is the --
A. I could be wrong, but I -- I --
Q. What is the disadvantage of resubmitting the written form that Kana originally came up with that identifies property values and separately sets out ocean view as elements for consideration to get resident feedback on those issues?
A. I -- what is the disadvantage?
Q. Yeah.
A. The disadvantage is some of it is plowing old ground. Another disadvantage is that survey was designed from his earlier draft, which is no longer the plan. He now has a different plan; one recommended plan for four management units. We've all learned from our experience with this survey that there's probably better ways to get representative input from people than simply

relying on one survey form.
Q. Okay. What are those ways?
A. Having another public meeting, a public hearing, to receive comments and by e-mail and by people speaking out at our meetings.
Q. Anything else?
A. We get letters from you guys.
(Off-the-record discussion.)
BY MR. JAMES HOOD:
Q. In your fiduciary duty, will you consider the opinions of property owners, whether not -- whether or not they live and vote on Sullivan's Island?
A. Sure.
Q. And in light of the education that Council has had about the utility of survey forms such as what we've discussed here today in Exhibit 3, is the remaining avenue for concerned citizens about the accreted land management plan simply to make phone calls, send e-mails, write letters, and attend public meetings?
A. That sounds like lots of options.
Q. Is the Town committed to considering the feedback they get? And how do those citizens know that they actually consider it?

A. Same way they know that we consider feedback on anything else. Town Council has to make decisions. We incorporate the feed -- or we attend to the feedback we get from people. It may be -- that feedback may be incorporated -- or that position may be incorporated in our decision or it may -- our decision may run counter to what the correspondent's preferences are.
Q. Okay. And in order to consider that information, you've first got to receive the information. Right?
A. Uh-huh.
Q. So what is the economic impact you have evaluated?
A. Well, you are talking about two different things. You were talking about receiving input from the public that we can get it via e-mails, public meeting presentations, or whatever the others were, letters and something else. I don't know what you are talking about with economic impact analysis. Those are two different things. You were talking about hearing from the public.
Q. I'm talking about the effect that this program is going to have, or potentially could have, on economic values to property, homeowners,

the tax impact. That's what I mean by economic impact, the tax revenue, all those sorts of things.

A. Uh-huh.

Q. In order for the Town of Sullivan's Island to consider the economic impact, it has to be presented with some economic data describing what is expected to happen from an economic standpoint if this plan is implemented. And my question to you is: Have you received any such data?

A. Not that we've solicited, to my knowledge.

Q. Have you received any such data unsolicited?

A. Mr. Hartnett's letter.

Q. Anything else?

A. I'm not aware of anything else at this point.

Q. So would you agree with me that as the Council, you don't have the ability to consider the economic impact until that information is brought to you, either solicited or unsolicited?

A. I don't necessarily agree with that. Because I think you've got -- we've got access among ourselves and staff to a lot of institutional

memory on the island, a lot of experience, a lot of information.

Q. And how do we, as citizens, understand what information that is that you have institutional access to and -- and knowledge of?

A. I mean, the trend of property values on Sullivan's Island is actually available to everybody. Everybody out there gets letters from realtors showing them what's happening with prices over the last number of years.

Q. And do you think that that is a type of economic information that is appropriate for consideration in making an accreted land management plan that would affect 90 acres of ocean front property?

A. I think that you're assuming that we can't do anything without getting some sort of elaborate statistical analysis from somebody about speculative changes in property values based on the management of property that the Town owns. To the extent that this is managing our own property, to the extent that its regulating zoning ordinances, that may or may not have property -- an impact on property values.

We will hear from property -- from

adjacent property owners, I'm sure, who wish to state the case that it will have a deleterious impact on them. I'm sure that we can task other people who have been involved with other similar land management area -- efforts to tell us about the impact it has on property values.

Q. Are you aware of any other maritime forest on a fully developed barrier island?

A. This would be -- this makes us pretty unique. Obviously Dewees, whether you consider Dewees fully developed or not, has a maritime forest. I know that -- I have never been there, I don't know to what extent they actually qualify as a barrier island -- that Spring Island is known and derives most of its appeal from the fact that it's a very naturally -- natural, developed in nature, oriented preserve.

Q. Well, it's -- then as I understand it there's --

A. There's obviously the beginnings of maritime forests, if not lots of it, on Kiawah.

Q. And what is your basis for that opinion?

A. Which opinion?

Q. That there's a maritime forest on

Kiawah?

A. I've seen pictures.

Q. Of what?

A. Of Kiawah.

Q. What parts of Kiawah? It's an 11-mile long island.

A. I don't know which parts.

Q. Has someone told you there's a maritime forest over there?

A. I have driven out there, and we met with the guy who is in charge of their protected land management plan. I'm getting the name wrong.

Q. What's his name?

A. I don't remember.

Q. When did you do this?

A. Huh?

Q. When did you do this?

A. Sometime in the last year and a half or so.

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. Now, the -- how big was the maritime forest that you went and looked at with this person on Kiawah?

A. I didn't walk it with him. We met with

him in his office, Mike Perkis and I did; and we reported back to Council. We were looking for ideas about how other islands manage such things.

Q. So you went all the way out there, and you didn't go look at the maritime forest?

A. We were there to learn more about management techniques than about the extent of their maritime forest.

Q. Have you been able to extrapolate from other organizations -- or neighborhoods, communities, towns, et cetera, the economic impact that a maritime forest has had on that region and extrapolate it to Sullivan's Island?

A. No. Other than it seems to me, as a naive lay observer, that when people are advertising property as being adjacent to a national forest or anything like that, that must be a selling point. So you see land in various places advertised; well, sometimes they'll make mention of the fact that it's up against some protected either wildlife sanctuary or forest -- or protected forest or something like that.

Q. Okay. And --

A. They don't advertise if it's up against a bathhouse.

Q. It depends on who you are asking, I guess.

(O'NEIL EXH. 6, 5/27/2010, Brumley/Maybank Letter, was marked for identification.)

BY MR. JAMES HOOD:

Q. Exhibit 6, have you seen this letter from Frank Brumley to a realtor, Johnny --

A. I think that's the one you were asking me about earlier today.

Q. Yeah.

A. What was the -- what was the question?

MR. HAIR: He asked you had you seen it.

THE WITNESS: No, no. I'm sorry. What's the question to Mr. Brumley?

BY MR. JAMES HOOD:

Q. Mr. Brumley entered into a contract to purchase the house. And --

A. Okay.

Q. -- if you look at his affidavit, he'll tell you that when he did his due diligence -- well, that speaks for itself.

A. I see that.

Q. Okay. Exhibit -- Exhibit Number 6 that

we marked to your deposition has an affidavit that says that -- that a Mr. Brumley entered into a contract to buy a house at lot 2429 Atlantic Avenue for $2 million. That was based on the value of the house at $300,000 and a lot value of $1.7 million. And the contract was cancelled because he had no confidence in the ability to manage the accreted land vegetation in order to provide an ocean view.

Is that the type of con -- or concrete evidence that you were talking about as having an impact, an economic impact on real estate values?

A. That's one transaction. And I'm told that real estate deals crash and burn all the time. So that's hardly enough data to give me a sense of anything about that.

Q. Okay. And so the only data we talked about is Hartnett's letter and that Brumley letter. Tell me, I just want to know -- and I'll stop -- the universe of sort of the economic data that has been considered by Town Council and by you and discussed by Council.

A. Well, there have been discussions that we've had where people bring different points of view to it.

Q. Are you talking about the public?

A. Public and Council.

Q. Okay. And -- and when are the meetings with Council where Council has brought economic perspective? During the meetings?

A. It comes in on a lot of our discussions. We've not devoted a meeting to it. There's never been an agenda item labeled economic impact of accreted land management plan, nor do I feel that we need to apologize for not having done that.

Q. Do you have any intention of ever doing that?

A. I think that we probably, in light of all of the interest that this has drawn from some of you, that we should have -- it behooves us to get somebody from the County Assessor's office to come in and talk to us to give us some initial grounding in what the issues might be.

Q. And then what about the --

A. They're the ones that are going to be determining appraised tax values.

Q. Okay.

MR. ROBERT HOOD: Ask him this question.

(Off-the-record discussion.)

BY MR. JAMES HOOD:

Q. Briefly, look at 9179 in your Exhibit 1, please --

A. Okay.

Q. -- where Benke e-mailed the Council members.

A. I'm sorry. What's the number?

Q. It's 9179.

A. Okay. And did you say it's from Benke?

Q. I think so.

A. No. This is the e-mail -- the main e-mail is from AlysAnne Wiedeke to other members of Council.

Q. I may have the wrong one. Hang on. No. The -- the bottom e-mail, which is the first one. And it's titled: Greg Ryberg, 1753 Atlantic Avenue.

A. Uh-huh.

Q. Is that a yes? Did you say yes?

A. Yes.

Q. And in that e-mail, Andy Benke is notifying Council members of a phone call he received from Greg Ryberg of Station 17 of Atlantic Avenue discussing the -- his belief that the Town's lack of property management in the accreted area

and the two restrictive tree ordinances would diminish the property values.

A. I see that.

Q. So I mean, this is back in 2003 that -- this issue that we're still talking about here today, is it not?

A. Oh, it's -- I'm sure it precedes that. I'm sure that people -- some individuals have raised this all along.

Q. But this isn't a -- sort of a ninth inning. This isn't a ninth-inning revelation that has -- that's just come to light, the potential impact on property values, is it?

A. It's not a ninth-inning revelation that some of the property owners who wish to have a view over the Town's land have used as many arguments as possible to try to convince the Town to improve their view by cutting the vegetation. Property values has been one of those arguments. You have heard all -- and made all the other ones.

Q. And this is a dispute over whether the Town, in your opinion, can manage its land the way it sees fit?

A. The way it sees fit and appropriate for the benefit of the Town's citizens.

Q. Do you think it's appropriate for Council to ignore the requirements of a -- a deed that was executed and approved by a prior Council?

MR. HAIR: Object to the form of the question.

THE WITNESS: Do I think it's appropriate for the Council to ignore the requirements of that deed? I think it's in -- it's not appropriate to ignore those requirements to any great and intentional degree.

BY MR. JAMES HOOD:

Q. Well, not my question. My question isn't --

A. That's the question I answered.

Q. My question is: That document sets forth verbatim requirements that have to be complied with, does it not?

MR. HAIR: Object to the form.

THE WITNESS: It sets --

BY MR. JAMES HOOD:

Q. What was your answer?

A. It sets forth requirements on the document.

Q. Okay. There's -- there's nothing in there about intentional or unintentional

violations, is there?

A. I don't recall.

Q. Do we need to look at it again?

A. No.

Q. Okay. I think I'm pretty familiar with it, and I didn't see the word "unintentional" in there.

If there are violations or a failure to comply with those restrictions, then the right exists for third parties to undo what the Council has done if they fail to follow those requirements. We went through that. Right?

A. Uh-huh.

Q. Is that right?

A. That's what you said.

Q. I mean, you -- you saw the documents yourself, didn't you?

A. Uh-huh.

Q. Did you not?

A. I did.

Q. And if the Council, for whatever reason, intentional or unintentional, failed to follow the letter of the promises it previously made, then it has to abide by the consequences. You agree with that?

A. That would be for a judge to decide.
Q. But you wouldn't have any problems having to abide by what the judge decided in that case, would you?
A. It would depend upon -- it would depend on how it was decided and what the specific issue was. You presented some hypothetical situations to me. It's kind of hard to deal with them.
MR. JAMES HOOD: Okay. You have the right to read -- and he may have some questions for you. You have the right to read and sign your deposition transcript, which means the court reporter will transcribe everything that has been said here today; they'll send it your address. They can either send it to your lawyer or your home address. You just tell the court reporter. Do you want her to send it to your lawyer?
THE WITNESS: Lawyer, Yes. Sorry.
MR. JAMES HOOD: Okay. He'll forward it to you. You have 30 days from the date of the enclosure letter sending you the transcript to make any changes necessary to make the transcript accurate.
It has an errata sheet on it. The errata sheet is self-explanatory. You indicate the

page number and line number and the change that needs to be made and the reason for making the change. You sign that in the presence of a notary public, return it to the court reporter in the time set forth in the enclosure letter. If you fail to do that in the time frame set forth in the enclosure letter, you have accepted the transcript as transcribed. Do you understand that?
THE WITNESS: I do. And by "errata," do you -- you don't mean, gosh, what I meant was; what you mean is I did not say --
MR. HOOD: Well, your lawyer can help you with that.
THE WITNESS: Okay.
MR. JAMES HOOD: And certainly any questions you have about appropriateness of the changes. But let me tell you that if you're changing testimony and you communicate, even with your lawyer, the discussion about changing that testimony is not privileged, in my view. He may take a different view, and we may have to get a judge to agree.
THE WITNESS: Uh-huh.
MR. JAMES HOOD: So -- so know that when you are reviewing it, if you're asking for

help --
THE WITNESS: I mean, but if it's a matter of I meant -- you know, I said this, and it sounded like something else, then --
MR. HAIR: We'll deal with that. Don't worry about that.
THE WITNESS: All right.
MR. HAIR: That's will all be fine.
MR. JAMES HOOD: But it's just the timing is the most important part.
THE WITNESS: Yeah. Thirty days from the --
MR. JAMES HOOD: And if for some reason you're out of time and you need more time, let us know and we'll agree to it.
THE WITNESS: Okay.
MR. JAMES HOOD: But that's -- that's the way the process works.
Now, your lawyer may have some questions for you.
MR. HAIR: I don't have any questions.
THE WITNESS: Just --
MR. HOOD: Yeah. Just leave that right here.
THE WITNESS: This is yours, this is

mine, this is yours.
MR. HAIR: We're done.
THE VIDEOGRAPHER: This concludes the videotape deposition of Patrick M. O'Neil, Ph.D. The time is approximately 6:54 p.m. We're now off the record.
(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)
(The deposition concluded at 6:54 p.m.)

SIGNATURE OF DEPONENT

DEPONENT: PATRICK M. O'NEIL, M.D.
DEPOSITION DATE: DECEMBER 7, 2010
REPORTER: LAURA J. BASH
CASE CAPTION: BLUESTEIN vs. TOWN OF SULLIVAN'S ISLAND

(Please return both Signature of Deponent pages)

I, the undersigned, Patrick M. O'Neil, M.D., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPONENT: PATRICK M. O'NEIL, M.D.
DEPOSITION DATE: DECEMBER 7, 2010
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PAGE	LINE	CHANGE	REASON

PATRICK M. O'NEIL, M.D. Date

I, Laura J. Bash, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Laura J. Bash, RPR
My Commission expires:
October 5, 2015

CERTIFICATE OF REPORTER

I, Laura J. Bash, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of December, 2010, at Charleston, Charleston County, South Carolina.

Laura J. Bash, RPR
My Commission expires
October 5, 2015

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REQUESTED INFORMATION INDEX
(No Information Requested)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodor Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
	)	Town's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment[1]
Plaintiffs,	)	
	)	
Versus	)	
	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
	)	
Defendants.	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

FACTS ON WHICH THE PARTIES AGREE[2]

The Town agrees with the Plaintiffs on a number of key points raised in their Motion for Summary Judgment:

1) The Town agrees that there are photographs reflecting the appearance of the AL in 1991;

2) The Town agrees that deed restrictions were placed on the land in 1991;

3) The Town believes that the words of the Deed Restrictions are clear.

4) The Town agrees that some of the Plaintiffs' quoted language from the Deed Restriction Summary accurately describes the view protected by the Deed Restrictions: "The scenic

[1] The Town also wishes to incorporate by reference as if set forth fully herein all arguments and exhibits included in the Town's similar Memorandums in Support of Summary Judgment previously filed.

[2] The Town offers these as true points of agreement. This is in contrast to the unconventional view of "Undisputed and Uncontested Facts" displayed in the Plaintiffs' brief. The Town is surprised that Plaintiffs would claim as "undisputed and uncontested" statements that the Town "without proper cause and directly contrary to the ... deed" took certain actions. See Plaintiffs Memorandum in Support of Summary Judgment, at p. 8. The Town is similarly surprised to see the Plaintiffs' claim as "uncontested" that the Town totally ignored the Plaintiffs rights and "put in place a program and policy to destroy Plaintiffs' ... property rights." Id. In a similar vein, the Town wonders how the Plaintiffs can fairly characterize Exhibit 11, a letter drafted by Mr. Hartnett, as a "formal opinion under oath" or "uncontested testimony" before the court. See Id. at pgs. 9, 15. The list above is not intended to be exhaustive, but illustrates the need for the Court to look with a skeptical eye at any fact on which the Plaintiffs assert the Town agrees.

value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the entire property."[3]

5) The Town agrees that the condition of the AL today is not in controversy and that the appearance differs from the exact way it looked in 1991;

6) The Town agrees that the Low Country Open Land Trust has a right to enforce the deed restrictions if the Town violates them;

7) The Town agrees that question of a "breach" is one that can be decided as a question of law since the words of the deed restrictions are plainly written and there is no dispute as to the physical condition of the land in 1991 or today.

FACTS NOT CAPABLE OF DISPUTE

In addition to the above, there are also certain other "absolutes" that are not realistically capable of being disputed by either side in this case:

1) The Lowcountry Open Land Trust (the grantor and primary enforcer of the Deed Restrictions) has made annual inspection visits to the AL for the state purpose of assuring that the Town has faithfully honored the deed restriction requirements.

2) The Lowcountry Open Land Trust has for more than a decade, after every such visit, issued a written report finding that the Town is in compliance with the deed restrictions.

3) The Deed Restrictions contain the language "The Town may enact ordinances and regulations affecting the Property which are more restrictive than these Regulations or which are not inconsistent with these Restrictions. " Deed Restrictions, Para. 6.

4) The 1995 and 2005 Deed Restrictions allow less cutting than did the prior ordinance in place at the time the Deed Restrictions were enacted.

5) The cutting of vegetation on the AL has at all times (even since before the deed restrictions), been governed by a Town zoning ordinance governing cutting.

[3] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13, quoting the Lowcountry Open Land Trust's "Summary of Deed Restrictions."

6) At the time of the deed restrictions the applicable cutting ordinance forbid vegetation from being cut to a height less than three feet.

7) In 1995 the cutting ordinance became more restrictive and allowed less cutting. This was amended in 2005 to relax the 1995 ordinance somewhat.

8) No cutting ordinance amendment has been passed since 2005.

9) Since 1991, nature has caused plants to grow higher on the Accreted Land.

10) Since 1991 sand has accreted on the Accreted Land such that the Accreted Land no longer looks exactly as it did in 1991 and the Plaintiffs' houses are now further from the water's edge.

11) Since 1991, the winds and tides have acted to build some dunes and decrease others such that the Accreted Land no longer looks exactly as it did in 1991.

12) The South Carolina Office of Coastal Resource Management (OCRM) has drawn its critical line map in such a way that the vast majority of the Accreted Land in dispute here is "beyond the critical line." See Attachment A for OCRM map.

13) The Plaintiffs have been notified by OCRM that, regardless of the outcome of this lawsuit, they do not possess a right to cut beyond the critical line. See Attachment B, OCRM letter.

THE DISPUTE

The mission of the Lowcountry Open Land Trust deed restrictions is to protect nature for the public at large, not protect the Plaintiffs' porch view. With this reality in mind, the Deed Restrictions make sense and were clearly followed.

The dispute in this case comes down to a choice between two interpretations of the Deed Restrictions:

Plaintiffs' Interpretation:	The Plaintiffs read the Deed Restrictions as placing a duty on the Town to manage (cut) the Accreted Land so that (a) the Accreted Land looks exactly as it was the day the Deed Restrictions were signed so that their view of the water is not impaired by the growth of vegetation.[4] In short, the Plaintiffs believe the Deed Restrictions were designed and drafted to protect their right to a 1991 view *from their houses* to the ocean.[5]
Town's Interpretation:	The Town believes (a) that the Deed Restrictions were designed to protect the undeveloped, natural condition of the property; (b) that the Deed Restrictions do not grant a view easement to adjacent homeowners; and that (c) the Deed Restrictions left the Town with the "unrestricted authority" to manage vegetation on the Accreted Land. The view protected by the Deed Restrictions is actually the view *from the ocean / beach* towards the Accreted Land.

1) The Plaintiffs' Own Pleadings Demonstrate that the Town' Interpretation is Correct

The Plaintiffs claim the following passage from the LOLT's Deed Restriction Summary to be crucial: "The scenic value of this property is due to its visibility from the Atlantic Ocean and the public beach. Open space values derive from the undeveloped natural character of the

[4] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg.13, Plaintiffs claiming that the under the deed restrictions "the predominant plan and use of the property was to preserve this land precisely the way it physically looked in 1991...."

[5] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg.13 ("[I]t is clear that the predominant plan and use of the property was to preserve this land precisely the way it physically looked in 1991....")

entire property."[6] The Town completely agrees that this language is a controlling and accurate description of the deed restriction requirements. The protected view is the view **of the Accreted Land** "**from** the Atlantic Ocean and the public beach." (emphasis added). In other words, the deed restriction assures that beachgoers can see the nature on the AL when they look inland and do not have to look at the Plaintiffs' houses or other buildings. There is no support in the Plaintiffs' cited Deed Summary language for the idea that the terms "scenic enhancement" or "scenic view" in the deed restriction is intended to assure that natural plants on the AL will be artificially pruned to assure to allow homeowners a view the ocean.[7] The summary clearly explains that the view is the view **of** the AL, not a view of the ocean.

The Deed Restriction Summary is also dispositive when it describes the "open space value" as relating to the "**undeveloped**" natural state of the AL.[8] (emphasis added.) The Town has not developed the AL, it is inhabited by naturally growing plants and animals. Ironically, the Plaintiffs' complaint is that there is too much nature.

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[6] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13, quoting the Lowcountry Open Land Trust's "Summary of Deed Restrictions."

[7] The Plaintiffs frequently try to pass off the term "scenic view" / "scenic enhancement" as if it means "view of the ocean" despite the fact that the Deed Restrictions use the terms separately and distinctly. Paragraph 2 of the Deed Restrictions offers an excellent example of the difference.

The distinction between these phrases is quite significant. The general thrust of the Deed was to protect the view of the AL from the beach and ocean. See Deed Restriction Summary. This general protection would, absent specific exception, allow no consideration to be given to homeowner views at all. Thus, the deed specifically went back and granted the "Town" the "*unrestricted authority* to trim and control the growth of vegetation" for a variety of reasons, including "providing views of the ocean and its beaches to its citizens." Deed Restrictions, Para. 2. This allows the Town the discretion give some consideration to view of the ocean (if it so desired, in its "unrestricted authority") because the general rule of the deed is that no such consideration could be given. But the fact that the Town was given "unrestricted authority" precludes the Plaintiffs from second guessing the Town's decision to protect more vegetation than Plaintiffs prefer. Similarly, Paragraph 6 leaves the Town with the express authority to pass laws that are "more restrictive" than what existed in 1991, thus reaffirming that the Town's "unrestricted authority" includes the right to decide to cut less. Basically, this is a political decision and the Plaintiffs' remedy is the political process, not the court system.

[8] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 4, describing the purpose of the LOLT transaction as preserving the "undeveloped nature of the property." See also Id. at pg. 5.

The Plaintiffs claim that the Deed Restrictions were intended to keep AL vegetation pruned enough to allow their view is exploded in at least two more ways by the very LOLT Deed Restriction Summary that the Plaintiffs provided this Court. *First*, the Summary does not list vegetation alteration as one of the protections for view / open space. The Summary separately lists three conservation values protected by the Deed: (1) "Scenic Views and Open Spaces"; (2) "Wildlife Habitat Values" and (3) "Water Quality Values." The Summary specifically states that "Wildlife Habitat Values" and "Water Quality Values" are protected by the "limited ability to alter vegetation." Fatal to Plaintiffs is the fact that the Summary's list of restrictions protecting "Scenic Views and Open Spaces" **does not list vegetation alteration** as one of the protections associated with view protection. Instead, the listed protections for view / open space are "limitations on subdivision, building and commercial use." This is entirely consistent with the whole purpose of the project – which was to protect the view *from the beach* (not from the houses)[9] and to protect against residential / commercial development of the AL.[10] *Second*, the Deed Restriction Summary debunks the Plaintiffs' argument that the vegetation management contemplated by the deed is manicured pruning. The Deed Restriction Summary notes that Wildlife Habitat Value is protected by "the limited ability to alter vegetation". Similarly, the protection of Water Quality is described as "[t]he limited ability to alter vegetation protects existing vegetation." Neither of these descriptions suggest that the Deed intended mandatory, severe, repeated, and unnatural cutting of the AL to a "flat top" to protect the Plaintiffs view.

[9] "The scenic value of this property is due to its visibility *from the Atlantic Ocean and the public beach.*" Deed Restriction Summary, Pg. 2 and Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13

[10] "The primary design elements [of the deed restrictions] revolved around maintaining the natural character of the property and protecting the accreted beach from future development and commercialization." Deed Restriction Summary, Pg. 2.

2) **The LOLT, grantor and primary enforcer of the deed restrictions, Agrees With The Town's Application of the Deed Restrictions.**

The Land Trust that drafted and continuously monitors / enforces the deed restrictions has found the Town's stewardship of the AL to be compliant. "After LOLT conveyed the Accreted Land to the Town of Sullivans Island, employees of LOLT monitored the Accreted Land for the purpose of monitoring the Town's compliance with the deed restrictions." Affidavit of Elizabeth Hagood, at Para. 13. As part of this the "LOLT periodically and regularly visited the Accreted Land each year since 2001, reviewed the existing field conditions, compared the field conditions to the deed restrictions, and found nothing that violated the deed restrictions." Id. at para. 15. The LOLT's contemporaneous inspection reports were similarly clear. See, as one example, the 2012 Inspection Report attached as Exhibit D ("The Town Council has the authority to enforce the Town's Vegetation, Tree and Beach ordinances.") Thus, for the Plaintiffs to prevail here the Court would have to find that the self-interested Plaintiffs, as third party beneficiaries, have a better understanding of the deed requirements than does the primary drafter, primary beneficiary, and primary enforcer of the deed. It is the Town, not the Plaintiffs, that is entitled to Summary Judgment.

3) **The Sea Pines Case Cited by Plaintiffs Actually Supports the Town's Position by Highlighting That the LOLT Deed Language Does Not Create a View Easement.**

The Sea Pines case offered by the Plaintiffs[11] demonstrates classic "view easement" covenant language and, in so doing, makes clear that the LOLT deed granted no such right to the Plaintiffs. The Sea Pines court specifically recited the following covenant language:

> "There shall be reserved for the use and benefit of adjacent second-row lot owners an easement of view running along the side boundary lines of oceanfront lots for a

[11] See Plaintiffs' Memorandum in Support of Summary Judgment at p. 17.

> width of five (5) feet .... [T]he purpose of this easement is to enable second-row lot owners to maintain permanently an open area sufficiently unobstructed to afford a direct view of the ocean and direct circulation of ocean breezes. Owners of ocean-front lots may not erect any fence, wall or other structure interfering with such easements." Sea Pines Plantation Co. v. Wells, 363 S.E.2d 891, 895 (SC 1987).

The Sea Pines language perfectly illustrates what the Plaintiffs ***wish*** the LOLT Deed said. Nowhere in the LOLT deed is the term "easement of view" (or anything close) used. Nowhere in the LOLT Deed does the document talk about view rights for adjacent property owners. Nowhere in the LOLT Deed does it speak of guaranteeing residents a view towards the ocean.[12] In contrast, all indications are that the Deed was instead intended to assure that beach goers would be able to look inland towards an undisturbed Accreted Land. The Plaintiffs' in their own Summary Judgment Memorandum, actually recite that the scenic value protected by the Deed Restrictions is due to the Accreted Land's "visibility from the Atlantic Ocean and the public beach."[13]

Sea Pines demonstrates the type of covenant language that would be required to support the Plaintiffs' argument. The LOLT Deed and the Deed Restriction Summary read nowhere close to Sea Pines.[14] This stark difference in language demonstrates again that the Plaintiffs have no right to a view for the Town to breach.

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[12] At most the deed says that, when the Town exercises its "unrestricted authority" to trim vegetation it may (but is not required to) consider homeowner views of the ocean. See Para. 2, Deed Restrictions. The Deed also makes clear that the Town has the unquestioned right to pass ordinances that are more restrictive (i.e. allow less cutting). See Para. 6, Deed Restrictions.

[13] See Plaintiffs' Memorandum in Support of Partial Summary Judgment, pg. 13, quoting the Lowcountry Open Land Trust's "Summary of Deed Restrictions."

[14] Nor would one expect the language to be similar given the vastly different settings. In Sea Pines the language makes sense as a vehicle for the grantor, the subdivision developer, to increase the marketability of its inland lots offered for sale. In contrast, the "grantor" of the deed restrictions here, the Low Country Open Land Trust, has no purpose furthered by guaranteeing views to homeowners, but rather is concerned with protecting nature and the undeveloped state of the Accreted Land. Not surprisingly, the Sea Pines developer used language to serve its purpose and the LOLT used far different language in order to serve its far different conservation purpose.

4) **The "Promise" the Plaintiffs Claim Was Broken by the Town Never Existed - It Would Be Impossible to Perform.**

The "promise" that the Plaintiffs read into the deed never existed because it would require the Town to control nature. The Plaintiffs position is basically that the 1991 Deed requires the Town to maintain the AL the same way it appeared in 1991 photographs. As the Plaintiffs see it, the Town promised "to preserve the Accreted Property in the same manner and in the same experience, and with the same scenic views, as existed back in 1991."[15]

Despite the Plaintiffs faith in the Town's omnipotence, no man (and no Government) can stop nature or time. Blades of grass have grown every day since the deed was signed in 1991. Some trees have grown taller. Other trees and bushes have died. Some animals have moved in, some have left. All of this has been the product of nature. There is no way that the Town could stop this and perpetually maintain the Accreted Land as if it were some sort of manicured, unchanging Bonsai tree.

In making their 1990 era photographic argument, the Plaintiffs overlook that pictures taken in the 1989 – 91 time frame were taken immediately after Hurricane Hugo, a storm that scoured much of the sand bare and even cut some islands in half. Hugo was, for Charleston, the Storm of the Century. Thus, 1991 photos do not show the normal state of the Accreted Land, but rather a very unique plant landscape that could only be maintained / recreated by either another Hurricane or a bulldozer. Thus, arguments that the Accreted Land was intended to stay exactly as it looked after a once-in-a-lifetime hurricane are unrealistic.

The issue presented by sand illustrates the ridiculousness of the Plaintiffs argument. All agree that sand is accreting between the Plaintiffs and the ocean. The "Accreted Land" is called

[15] Plaintiffs' Memorandum In Support of Summary Judgment at p. 16, See also Id. at pp. 6 – 7 (contrasting 1990 era photos with 2010 photos as evidence of breach.)

that for a reason. As accretion occurs, there is no dispute that the distance between the Plaintiffs and the ocean has grown. There can be no dispute that one gets a better view from close-up than from afar. If the Plaintiffs' definition of the Town "promise" is correct (to preserve the same land exactly as in a 1991 photograph), then the Town and LOLT should be constantly dredging and mining sand to assure that the shoreline remains the same distance from the Plaintiffs houses as it did in 1991.[16] After all, the experience of the Accreted Land is different now if it is many feet wider than in 1991. The view of the ocean from Plaintiffs porches is different now if they are many feet further away from the water than in 1991.[17] This reality demonstrates just how wrong the Plaintiffs are with their interpretation.

A final irony in the Plaintiffs interpretation of "preserving the status quo" is that the status quo of the Accreted Land in 1991 was a dynamic, rapidly shifting environment. In 1991 (and every year since) accretion, growth, drought, fire, hurricane, or high surf changed the Accreted Land on a daily basis. The Plaintiffs say that the Town must "preserve the status quo" by keeping the Accreted Land just as it was in 1991.[18] That is not the "status quo." The Plaintiffs really want to freeze a 1991 photograph in time. In so doing, they would make the Accreted Land a static, unchanging environment. The Accreted Land was not a static, unchanging environment in 1991. Instead, it was a living, changing breathing part of nature that constantly changed. The Plaintiff's interpretation would, far from preserving the 1991 status quo, actually destroy it by killing an environment that has for eons been in a state of constant natural change.

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[16] The Plaintiffs cannot claim such a reading is foreclosed by the deed restriction provisions limiting land disturbance because, at the time of the 1991 snapshot that Plaintiffs urge, much of this sand did not exist.

[17] The Town should also probably be shaving off the tops of any dunes that have grown higher since 1991 since taller dunes, like taller plants, can impact a view.

[18] "[T]he Plaintiffs believe this Court will conclude ... that the predominant purpose was to preserve the status quo – and to leave the Accreted Land ... the way it was in 1991." Plaintiffs Memorandum in Support of Summary Judgment at p. 14.

5) **The Plaintiffs' Interpretation of the Town's Duty Is Foreclosed by Relevant State Regulations.**

The impossibility of the Plaintiffs' deed restriction reading is illustrated by the fact that it ignores State law. The Plaintiffs believe that the Deed Restrictions contain a Town promise that the Accreted Land will never change from a 1991 photograph. The Plaintiffs argue to this Court that the Town promised this and that the Town is the impediment stopping them from cutting. What the Plaintiffs fail to appreciate is that, given the dynamic and changing beach environment, the OCRM "critical line" has shifted dramatically over the years. At this point, the critical line lies practically at the back boundary line of the Plaintiffs lots. See Exhibit A, Critical Line map. The Plaintiffs may not cut seaward of the critical line without State permission. See Exhibit B, Letter from OCRM to Plaintiffs' counsel. The Plaintiffs lack state permission. Id. The fact that the Plaintiffs' proposed reading of the deed restrictions ignores State law strongly suggests that the Plaintiffs' reading is just plain wrong.

6) **Plaintiffs' Interpretation of Deed Restrictions Would Constitute an Unlawful Impairment of Legislative Power.**

The Plaintiffs' argument, if honored, would result in an unlawful impairment of legislative power. The Complaint is predicated on a belief that the Deed Restrictions the Town Council agreed to in 1991 legally deprived the Town of the power to enact certain ordinances for a period of fifty (50) years.[19] For the Plaintiffs' Complaint to work, the Deed Restrictions must mean that the Town is powerless to adopt any cutting rule other than the flat-top three (3') foot

[19] See Deposition of E. Bluestein p 36, lines 8 – 11 ("Q: Okay. So again, the crux of it is that you believe that the deed restricts the Town from passing laws that violate the deed?" "A Yeah.")

rule in place when the Deed Restrictions were imposed in 1991. South Carolina law does not allow local legislatures to limit their powers in this fashion.

As a general rule, a contract is not binding if it purports to limit the exercise of a municipality's governmental power for a period longer than the remaining term of office of the councilmembers that voted for it. Piedmont Public Service District v. Cowart, 459 S.E.2d 876 (SC App. 1996). See also, Cunningham v. Anderson County, 741 S.E.2d 545 (SC App. 2013) In other words, the Council leaving office must pass on to the successor Council the full (unimpaired) government powers of the office and cannot, by contract, give away the powers that successor councils should enjoy. See Id. at 880-882. See also, Newman v. McCullough, 46 S.E.2d 252, 255-256 (SC 1948).

In Piedmont the District had entered into a twenty year employment contract with Douglas Cowart. Eventually the relationship soured and during litigation Cowart counterclaimed asking the court to enforce the contract. The court refused, noting that the term of the contract extended beyond the term of office of the voting members and thus would, if enforced, "impair the right of their successors to remove such officer [Cowart] and to appoint another in his place." Piedmont, 459, S.E.2d at 881.

The same logic applies here to thwart Plaintiffs' interpretation of the Deed Restrictions. Zoning is unquestionably a governmental power. See I'On v. Town of Mt. Pleasant, 526 S.E.2d 716. Pursuant to South Carolina's Local Government Comprehensive Development Act this power is to be exercised by Councils. See Title 6, Chapter 29 of the South Carolina Code of Laws. In other words, this power is statutorily bestowed upon each City Council member as he or she takes office. If one accepted the Plaintiffs' claim that the fifty (50) year Deed Restrictions, approved by Sullivan's Island Town Council in 1991, created a "view right" that

bars changes in the zoning rules then the Deed Restrictions would have stripped fifty (50) years' worth of City Councilmen of a governmental power. This would be just as illegal as the employment contract in Piedmont.[20]

7) Plaintiffs' Interpretation of the Deed Restrictions Is Ridiculous on its Face

The Plaintiffs' attempt to read the deed restrictions to allow them to control town land is predicated on a ridiculous interpretation of the Deed Restrictions. The Deed Restrictions were imposed by the Low Country Open Land Trust (LOLT). The LOLT is dedicated to the preservation of open, natural land. See Para. 21, Second Amended Complaint. The Deed Restrictions explain that the purpose of the Restrictions is to "retaining land or water areas predominantly in their natural, scenic, open or wooded condition or as suitable habitat for fish, plants, or wildlife." (emphasis added) See Exhibit 2 to Second Amended Complaint. The Restrictions go on to say that "'natural, scientific, educational, aesthetic, scenic and recreational resource' as used herein shall, without limiting the generality of the terms, mean the condition of the Property at the time of this grant, evidenced by ... An aerial photograph of the Property...." Id.

[20] The Plaintiffs theory also runs afoul of "delegation of powers" concerns. The Supreme Court has previously explained on several occasions that a political subdivision may not "delegate away those powers and responsibilities which give life to it as a body politic. A municipal corporation ... created by state law, to which police power has been delegated, may not divest itself of such power by contract or otherwise." G. Curtis Martin Investment Trust v. Clay, 266 S.E.2d 82, 85 (SC 1980); see also City of Beaufort v. Beaufort-Jasper County Water and Sewer Authority, 480 S.E.2d 728, 732 (SC 1997). In other words, the State vested power in the political subdivision to make decisions and in so doing made clear that those decisions were not to be made by anyone else. This general logic has been specifically applied to prevent a municipal council from placing limits on its zoning authority. I'On LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (SC 2000)(Town Council could not delegate its power to determine zoning by deferring to result of a referendum.) Thus, contrary to Plaintiffs' desires, the Deed Restrictions cannot be read as a "contract" allowing the LOLT, the Plaintiffs, or anyone else to limit or dictate the zoning rules applicable in 2010 on the Town-owned AL. They also cannot be read as a contract installing some procedure (super-majority, referendums, etc) for changing a zoning ordinance because the procedure for zoning is set by state law. See S.C. Code Ann. Title 6, Chapter 29.

Clearly what the document intends is to insure that the property, at future dates, will be at least as good for wildlife, plants, animals, etc as it was at the date of the grant. The Town has not violated this intent.

a. The Plaintiffs' interpretation of the deed restrictions ironically conflicts with the entire point of the Deed Restrictions. One should not forget that the Deed Restrictions were supposed to help maintain the AL in a *natural* state. The Plaintiffs argument is that "natural state" basically means "a good ocean view for Plaintiffs" and thus requires yearly artificial, unnatural pruning.[21] Moreover, the Deed Restrictions were supposed to increase wildlife habitat. See Deed Restriction at third "Whereas" clause (Noting a purpose as being to maintain the land "as suitable habitat for fish, plants, or wildlife.") Yet the Plaintiffs argue that "too much natural wildlife" has resulted from the Town's management of the property. See Second Amended Complaint at Para. 58(e), (f), and (g); Page 14, fnt. 8, and Para 116 - 118.[22] The Plaintiffs' have lost sight of the forest while chopping at the trees when it comes to understanding the Deed Restrictions.

b. The Plaintiffs reading of the term "condition of the Property at the time of this grant" blatantly ignores the words that precede the phrase. The Plaintiffs' chosen clause is preceded by the following: "'natural, scientific, educational, aesthetic, scenic and recreational resource' as used herein shall, *without limiting the*

[21] See Deposition of K. Albenesius p 21, lines 18 – 22 ("Q If you had to choose between the natural state of the accreted land, which blocks your view, or having human intervention to manicure it every year at three feet to keep that view, which would you choose?" "A Human Intervention.")

[22] See also, Deposition of K. Albenesius p 20, lines 1 – 3 ("Q Now, your lawsuit says that the natural wildlife and plant growth on the accreted land is causing you harm, right?" "A Yes. I guess you could say that. I'm not positive."); Deposition of T. Albenesius p 26, line 20 – p 27, line 11. See also, Deposition of N. Bluestein p. 50, line 15 – 16 and p 71, lines 2-6.

generality of the terms, mean the condition of the Property at the time of this grant...." (emphasis added.) In other words, the paragraph is really saying that the Deed Restrictions are intended to foster the property as a "natural, scientific, educational, aesthetic, scenic and recreational resource." While the condition of the property as shown in photographs of February 12, 1991, is one measure of this, it is not intended to be the only measure. The condition of the property on February 12, 1991 was not intended to "limit[] the generality" of those broad terms. And yet that is precisely what Plaintiffs do in arguing they possess a "view right" that the Town must continue to artificially manipulate the AL to try to undo any act of nature (plant growth) that occurs.

8) **The Plaintiffs Claims of Fraud Are Immaterial, Irrelevant and Statutorily Barred**

One obvious bar to the fraud aspect of Plaintiffs' claim is the South Carolina Tort Claims Act. Plaintiffs agree that the Town is a governmental entity. See Second Amended Complaint at Para. 2. As a governmental entity, the "fraud" aspect in this cause of action is one to which the Town is immune. The General Assembly specifically provided that "[t]he governmental entity is not liable for loss resulting from: (17) employee conduct outside the scope of his official duties or *which constitutes actual fraud*, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. 15-78-60 (emphasis added). The distinction between "Breach of Contract" and "Breach of Contract Accompanied by Fraudulent Act" is unquestionably the "fraudulent act". The Tort Claims Act bars the Town from being liable for such acts.

The Court should also take note of the fact that none of the fraudulent conduct alleged by Plaintiffs as fraudulent constitutes an official "act" of the town. The Town certainly passed ordinances in 1995 and 2005 that deal with the Accreted Land. These were open, publicly known, legislative acts. The Plaintiffs, perhaps recognizing this, try to argue that the "fraudulent act" is communication between Town officials and a contractor working for the Town to study the Accreted Land and gather community input. See Second Amended Complaint at Para 100 – 102. Basically Plaintiffs claim that the Town told the consultant to ask some questions, but not others, and to communicate with the Town (consultant's client) rather than directly with citizens. Id. But there is no legal or governmental requirement that the Town send out any questionnaire or engage in any particular method of fact finding. The Town's elected Council may consider or ignore whatever information it desires in making its decision – and that may include information that Plaintiffs believe inaccurate or even biased. Mayor Smith even testified in deposition that he had little faith in surveys and that the choice of phrasing between the actual questionnaire and the Plaintiffs' preferred version would have made no difference.[23] At the end of the day, Plaintiffs' recourse is at the ballot box rather than a courtroom if Plaintiffs believe that Council is making bad decisions based on inaccurate data.

Plaintiffs' alleged "fraudulent acts" are even more baffling here in light of the fact that the allegedly biased data gathering is related to potential future legislation that has never been finalized or passed as a law. The alleged fraudulent acts have nothing to do with the 1995 or 2005 ordinances that the Plaintiffs erroneously claim violate the deed – they could not have because those ordinances had already been on the books for years. The alleged fraudulent acts reflect to the fact that the Town has from time to time given thought to amending the 2005 ordinance. Not only has this amendment never occurred, no final decision has ever been reached

[23] Deposition of Carl Smith, pp. 43,44 and 48.

as to what the amended rules would even be. Thus, what Plaintiffs are complaining of is core political debate that might or might not ever result in legislation being passed. The claim is unripe.

Such political debate and information gathering of the Town as described above is also immune from suit based on multiple other provisions of the Tort Claims Act. See S.C. Code 15-78-60 (1) ("legislative ... action or inaction"); (2) "administrative action or inaction of a legislative ... nature."); (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.")

Finally, even if one considered the Town to have "acted", there is nothing remotely fraudulent about the alleged conduct. The questionnaire about which the Plaintiffs complain is clear on its face. It might have been phrased differently – some ways the Plaintiffs would have liked more and some they might have liked less. But the version that was sent out was not deceptive. If it failed to give some fact the weight Plaintiffs desired then that was self-evident and not hidden. It was hardly fraud.

This 27th day of March 2014

J. Brady Hair
Derk Van Raalte (9286)
PO Box 61896
North Charleston, SC 29419
843-572-8700
843-745-1082
derk@bradyhair.com

Attorneys for the Defendants

Attachment A

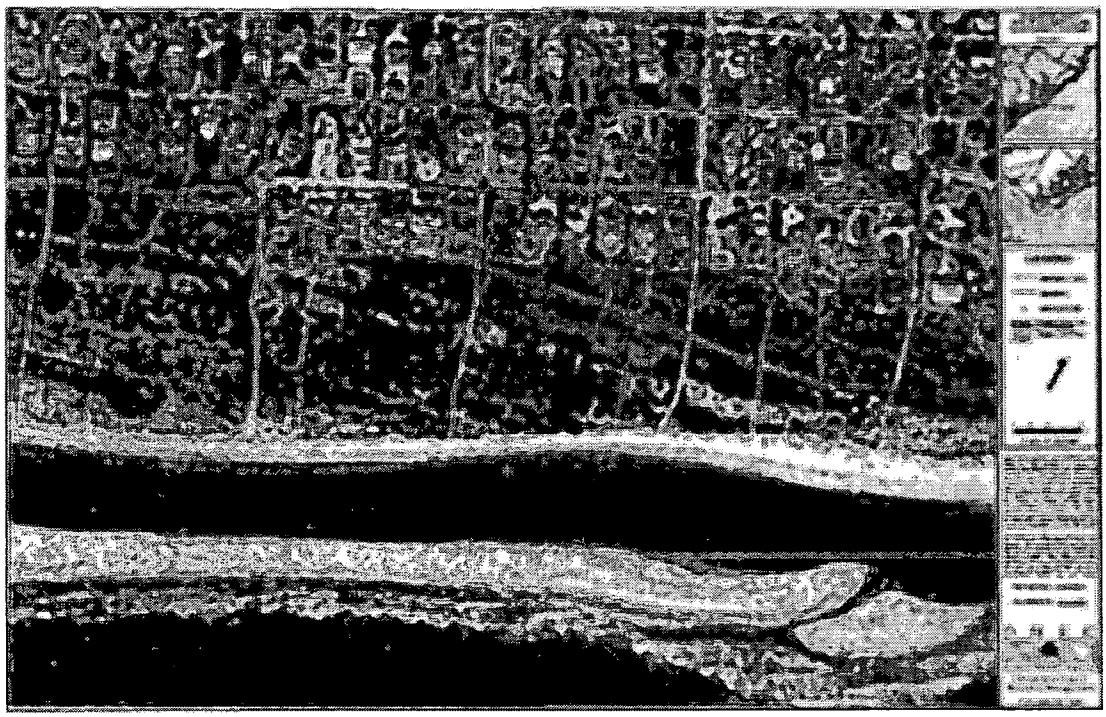

Exhibit B

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

January 24, 2014

Hood Law Firm, LLC
Attention: Robert H. Hood, Sr.
Post Office Box 1508
Charleston, SC 29402

Re: Nathan Bluestein, et al. v. Town of Sullivan's Island and Sullivan's Island Town Council
Civil Action No. 2010-CP-10-5449

Dear Mr. Hood:

I have reviewed your Second Amended Summons and Complaint in the above-referenced case filed December 10, 2013. Although your clients are challenging the Town of Sullivan's Island's 1995 and 2005 Town ordinances, I would like to address your second request for relief on page 27 of your Complaint. Your clients are asking the court to enjoin and restrain the Town of Sullivan's Island and the Town Council "from interfering with the rights of the citizens of Sullivan's Island who own property immediately adjacent to the Accreted Land, including Plaintiffs, to cut, trim and prune, at any time or times, all variety of shrubs and trees in the Accreted Land to a height of no less than three (3) feet above the ground."

Although I do not know the extent of your clients' desires to cut, trim and prune the shrubs and trees seaward of their homes, I would invite your attention to S.C. Regulation § 30-11D(6). This regulation prohibits "*[t]he destruction of beach or dune vegetation seaward of the setback line ... unless there is no feasible alternative.*" Furthermore, S.C. Regulation § 30-21F(4) states that "*[a]ny activity that will disturb the beach or dune vegetation within the critical area requires a Coastal Council permit.*" I mention these regulations in an effort to help your clients avoid violating them if they prevail in the above-referenced action.

If you have any questions or would like to discuss this further, I am available to speak with you. My direct dial number is 953-0213. Thank you very much.

Very truly yours,

Bradley D. Churdar
Chief Counsel

BDC/mdc
cc: Derk Van Raalte, Esquire
Brady Hair, Esquire

Exhibit C – Affidavit of Elizabeth Hagood, Lowcountry Open Land Trust (w/o Attachments)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Nathan Bluestein, Ettaleah Bluestein, Theodor Albenesius and Karen Albenesius,	)	Case No. 10-CP-10-5449
Plaintiffs,	)	**AFFIDAVIT**
Versus	)	
Town of Sullivan's Island and Sullivan's Island Town Council,	)	
Defendants.	)	

PERSONALLY appeared before me, Elizabeth M. Hagood, who duly sworn, deposes, and states as follows:

1. I am competent to make this Affidavit.
2. I am 18 years of age or older.
3. That the contents of this Affidavit are true, and are made based on my personal knowledge.
4. I currently serve as the Executive Director of the Lowcountry Open Land Trust (hereafter "LOLT).
5. LOLT is a 501(c)(3) corporation that was formed in 1986.
6. I served as the first Executive Director from 1989 until 1994.
7. In May 2010, I returned to serve as Executive Director.
8. I have also been involved with various other community service organizations, and I served as the Chair of the South Carolina Department of Health and Environmental Control from 2002 to 2006.
9. LOLT is a local land conservation organization that is focused on protecting ecologically,

agriculturally, and historically significant land in the Lowcountry of South Carolina.

10. During my first term as the Executive of LOLT, the LOLT received a Title to Real Estate from the Town of Sullivan's Island pertaining to the real property described in the Title to Real Estate dated February 12, 1991.

11. On February 12, 1991, the LOLT executed and delivered a Title to Real Estate conveying the property described in the Title to Real Estate dated February 12, 1991 to the Town of Sullivan's Island.

12. I am familiar with the deed restrictions that apply to the land that is the subject of the Title to Real Estate dated February 12, 1991 (hereafter the "Accreted Land").

13. After LOLT conveyed the Accreted Land to the Towns of Sullivans Island, employees of LOLT monitored the Accreted Land for the purpose of monitoring the Town's compliance with the deed restrictions.

14. The attached monitoring reports were copied from the business records of the LOLT, those reports were created at or about the time that the compliance inspections were conducted by employees of LOLT and those reports are true and accurate copies of the records maintained in the ordinary course of the LOLT's business operations.

15. The attached monitoring reports show that LOLT periodically and regularly visited the Accreted Land each year since 2001, reviewed the existing field conditions, compared the field conditions to the deed restrictions, and found nothing that violated the deed restrictions.

FURTHER THIS AFFIANT SAYETH NOT.

Elizabeth M. Hagood

SWORN to before me this
27th day of February 2014.

Barbara B. Holmes
Notary Public for South Carolina
My Commission Expires: May 26, 2016

Exhibit D – 2012 LOLT Inspection Report

2012 Deed Restriction Monitoring Report

Protected Property: Sullivan's Island Beach

Focus Area: *CAWS - Sea Islands Initiative*

Current Owner: *Town of Sullivan's Island*

Approximate Acreage: *80 acres*

Date Title to Real Estate Signed: *January 15, 1991*

Charleston County Deed Book and Page for recorded Deed Restriction: *Book K 200 Page 484*

Date Deed Restriction Signed: *February 14, 1991*

Charleston County Deed Book and Page for recorded Deed Restriction: *Book K 200 Page 496*

Date of Last Monitoring Visit:

Date of This Monitoring Visit: *October 8, 2012*

Lowcountry Open Land Trust representative: *Meg Hoyle*

Did the property owner accompany the Lowcountry Open Land Trust representative?

_____ **YES** _____X_____ **NO**

If NO, identify who gave permission to monitor the property and how that permission was given:

Check any of the following that are currently in practice:

_____ Agriculture	_____ Aquaculture
_____ Commercial	_____ Hunting and/or Fishing
_____ Forestry	_____ Research
__X__ Recreational	__X__ Wildlife/Habitat Management
_____ Residential	_____ Historic Preservation
__X__ Open Space	_____ Equine Activities

1. **List acts or uses permitted by the terms of the deed restriction that have taken place since the last Monitoring Visit:**

   See Remarks section for information regarding activities, uses, and practices which are conducted on the protected property.

2. **List acts or uses prohibited by the terms of the deed restriction that have taken place since the last Monitoring Visit:**

None observed

3. **List alterations to ecological, scenic (trees or grounds) and/or historic features of the protected property that have taken place since the last Monitoring Visit:**

4. **List alterations to land-use, historical features and/or third-party activities that have taken place since the last Monitoring Visit:**

None observed

5. **List alterations to man-made features and activities (fence, gate, mailbox, signs, driveways and/or roads) that have taken place since last Monitoring Visit:**

See Remarks section for information regarding activities, uses, and practices which are conducted on the protected property.

6. List natural events (fire, hurricane, tornado, flooding, etc.) that have taken place since last Monitoring Visit:

Tropical Storms, Hurricanes and other Weather Related Phenomena

Remarks:

Public access paths, walkways and boardwalks are maintained and managed by the Town of Sullivan's Island. Continuous engagement in general repairs, upkeep, improvements and vegetation management along these established public access paths, walkways and boardwalks. Routine installation, replacement and addition of warning signs, town signs (restrictions/limitations), habitat signs and other public information signs along the access paths and dunes. The Town continuous updates and installs new station markers and signs along the public beach and access points. The signs are installed for the purposes of public safety and awareness. Trash cans and other receptacles for disposal of debris are located at public access points. Jetties, sea walls, dune fencing, and other erosion control devices are maintained as needed.

Per the terms paragraph 3 within the recorded Deed Restriction, the Sullivan's Island Town Council has the right to improve, change, modify or alter the protected property only if such actions are to further or effect one or more of the following enumerated public objectives or policies: drainage, mosquito control, public walkways and emergency access to the Atlantic Ocean, beach re-nourishment, erosion control, vegetation management, educational programs, public safety, public health and scenic enhancement.

The Deed Restriction document outlines the process by which Sullivan's Island Town Council will review proposed activities and uses on the property protected under the terms of the Deed Restriction.

Paragraph 4 of the Deed Restriction prohibits any structure and building with a roof, any pavement (asphalt, concrete or other non-porous materials), electrical power lines (or accompanying stations, pads, wires, or conduits), sewer lines or pipes, commercial activities which are related to the buying or selling of goods, services or things.

Based on the terms of the deed restriction the Town of Sullivan's Island and its elected Town Council have the right to issue permits for vegetation management and the right to enforce the rules, regulations and/or guidelines as they deem appropriate. The Town Council has the authority to enforce the Town's Vegetation, Tree and Beach Ordinances.

The Town Council and citizens of the Town continue to debate and discuss options proposed within the Accreted Land Management Plan. The Town will keep the Land Trust reasonably informed as to the discussions related to the Accreted Land Management Plan and a final version of the plan will be forwarded to the Land Trust for our files.

Descriptions of Photos Taken: **None taken**

Photographs of possible deed restriction violations and any made-made, natural or other changes in the property since the last Monitoring Report will be added to the property Notebook on file at the Lowcountry Open Land Trust.

Signature of LOLT Representative

Signature of LOLT Attorney Barbara B. Holmes

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Nathan Bluestein, Ettaleah Bluestein,)	Case No. 10-CP-10-5449
Theodor Albenesius and Karen)	
Albenesius,)	~~Memorandum in Support of~~
)	~~Defendants'~~ Motion for Summary Judgment
Plaintiffs,)	on All Causes of Action Due to Expiration of
)	Statute of Limitations or Unreasonable Delay
Versus)	
)	
Town of Sullivan's Island and)	
Sullivan's Island Town Council,)	
)	
Defendants.)	

FILED
2014 FEB 28 AM 11:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Defendants, by and through their undersigned counsel, will move before the Hon. Judge Scarborough in Charleston County, South Carolina, for an Order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is based on the untimeliness of the Plaintiffs' action. This motion is further supported by statutory law, caselaw and by the Defendants' Supporting Memorandum.

This 26 day of Feb., 2014

J. Brady Hair
Derk Van Raalte (9286)
PO Box 61896
North Charleston, SC 29419
843-572-8700
843-745-1082
derk@bradyhair.com

Attorneys for the Defendants

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
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COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
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Nathan Bluestein, Ettaleah Bluestein,) Theodor Albenesius and Karen) Albenesius,)	Case No. 10-CP-10-5449
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)	
Town of Sullivan's Island and) Sullivan's Island Town Council,)	
)	
Defendants.)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Introduction

This case should be resolved at the "ballot box" and not the Courthouse. The two plaintiff families that filed this suit are unhappy with a law governing plant height on a town-owned parcel near their houses. The zoning ordinance that specifies this plant height was properly adopted and enforced through the Legislative process. Rather than accept the results of representative democracy, the two Plaintiff families ask a court to impose their will on the majority of islanders. In so doing the two Plaintiff families challenge the fundamental rights of the citizens and responsibilities of the Town of Sullivan's Island to govern and operate as a democracy.

Statutory law and case law require that this case be summarily dismissed. There are many reasons for dismissal, all of which exist to protect the Governmental process upon which all citizens rely.

The Town of Sullivan's Island asks this court to grant it's motions for Summary Judgment to protect the integrity of the Governmental process and the right of it's citizens to participate in the political process by exercising their right to vote and act via elected representatives. The Court should dismiss the complaint and require the plaintiffs to operate under our system of democracy. If people are unhappy with a law, their remedy is to elect legislators that will change the law. That is the Plaintiffs' remedy here. They are not entitled to a court order setting aside representative democracy.

This court can and should dismiss the complaint based on the following reasons:

1. The applicable Statute of limitations has run on all the claims. There is no factual dispute that the plaintiffs are challenging the application and enforcement of a zoning ordinance that regulates and manages cutting of vegetation on the Town-owned Accreted Lands. Regardless of the allegations, to challenge a zoning ordinance, the case must be brought within 60 days of the passage of the ordinance. The plaintiffs missed the statute of limitations by years and therefore the court should not even hear the claims challenging the zoning ordinance and asking for relief. The case should be summarily dismissed.

2. The Plaintiffs claim that the deed restrictions and covenants constitute a contract and that the Town breached the contract. Once again, the Plaintiffs missed the three (3) year applicable statute of limitations for contract claims.

The plaintiffs also allege other claims that are barred by the South Carolina Tort Claims Act. All of the Plaintiffs other claims should be dismissed as they are barred by various limitations periods and other statutes.

3. The plaintiffs claim to have a "right to a view." Our courts have consistently held that there is no statutory or common law "right to a view" in South Carolina. This Court need not look far for the answer to this question. This very court considered a similar challenge to the Sullivan's Island Accreted Land cutting rules in Bloom v. Town of Sullivan's Island Board of Zoning Appeals, 2005-CP-10-1014, and Judge Scarborough noted that no such right exists. Further, our Supreme Court decided this issue, years ago, in a case involving our neighbor, the Isle of Palms. Put simply, there is no statutory or common law right to a view. This Court should follow the well-established law.

4. The deed restrictions and covenants clearly give the Town the right and responsibility to regulate, for the collective benefit of the residents (not just the two plaintiff families), the vegetation in the accreted lands. The deed gives the Town the "unrestricted authority" to trim vegetation. The plaintiffs interpretation is absurd on it's face. They basically contend that the accreted lands must remain "exactly the same as in 1991." Contrary to the basis for all of the plaintiffs allegations, the deed did not strip the Town of it's right to govern, but specifically emphasized that right.

For these reasons and others that will be the subject of subsequent filings, this Court should grant the Town's motions for Summary Judgment and return this issue back to where it

belongs....with the citizens of the Town of Sullivan's Island who have an appropriate remedy.....the Ballot Box.

Background

This matter comes before the Court pursuant to the Defendants' Motion for Summary Judgment based on the expiration of the Statute of Limitations and unreasonable delay. Years too late, two Plaintiff families sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the ocean. Plaintiffs contend that the Town violated various rights and duties by failing to cut (or allow others to cut) trees and shrubbery growing on town-owned land that lies between Plaintiffs' houses and the ocean.

The two Plaintiff families occupy "front row" lots on Sullivan's Island, meaning that no other *buildable lots* exist between Plaintiffs and the ocean. (Plaintiffs' parcels are 529-10-00-064 and 070). See Para. 50, Second Amended Complaint. That is not to say, however, that the Plaintiffs actually abut the beach. To the contrary, as shown in the following diagram at least one platted parcel (Parcel 529-10-00-087), owned by the Town, exists between the Plaintiffs and the water.

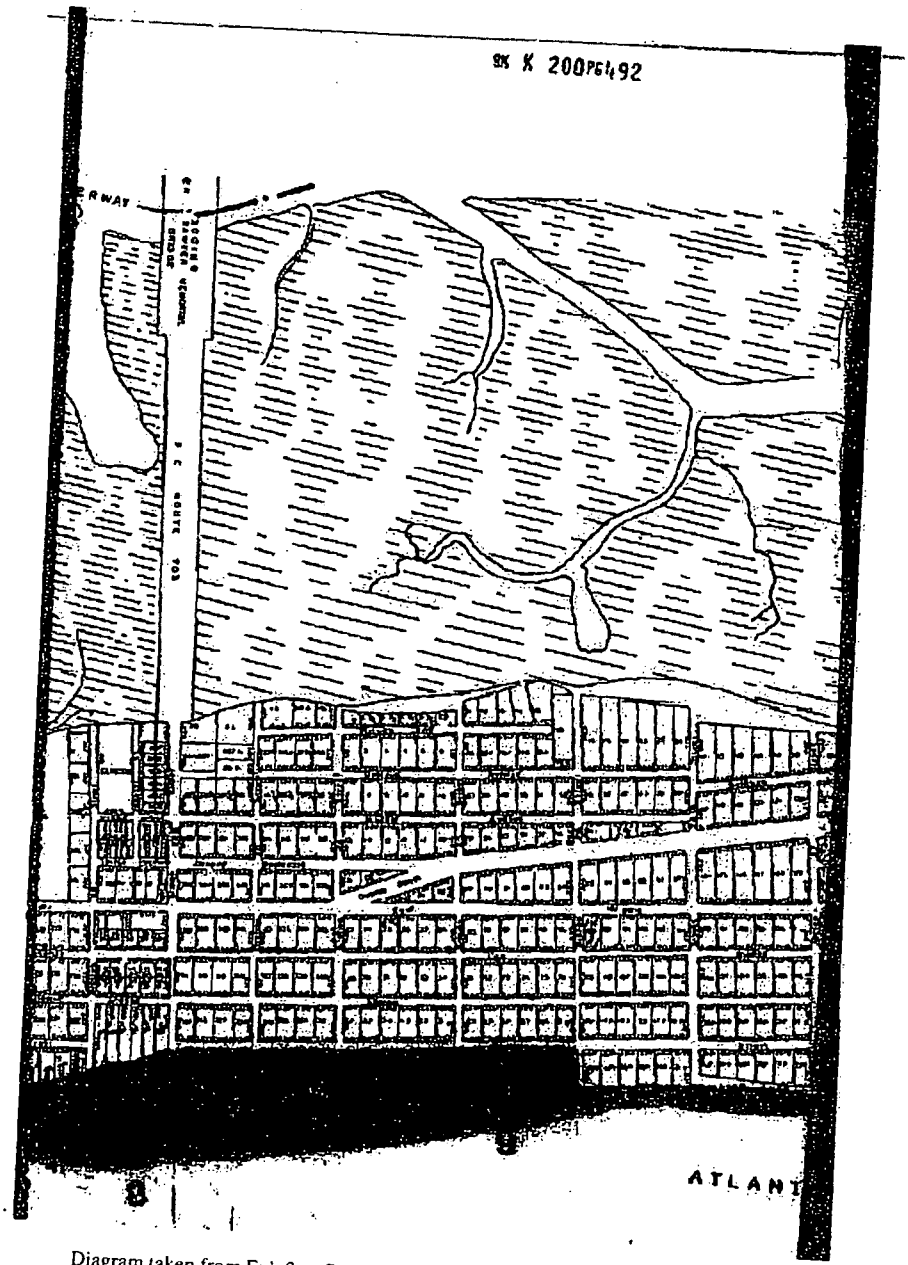

Diagram taken from Exh 3 to Second Amended Complaint[1]

[1] An identical diagram is contained within Exh 4 to the Second Amended Complaint (deed from LOLT to Town), recorded Bk K 200 PG507. The version from Exh. 3 is reproduced herein as it has a higher photocopy quality.

Over the years the Town's parcel 087 (hereinafter known as the "accreted land" or "AL") has grown in size due to sand accretion. See Para. 19, Second Amended Complaint. Plants growing on the AL have also matured. See footnote 8, Second Amended Complaint. The Town has always regulated the AL through zoning ordinances, which have changed from time to time. The Town, pursuant to zoning ordinances, has permitted nearby residents, such as the Plaintiffs, to enter the Town-owned AL to trim vegetation under certain terms and conditions. See Para. 42 - 43, Second Amended Complaint. Some, but not all, island residents have trimmed pursuant to the zoning ordinance over the years by obtaining permits from the Town. Presumably those that undertook trimming did so to preserve or enhance the view of the ocean enjoyed from their residences since they must gaze across the Town-owned land if they are to see the water. The Plaintiffs, now dissatisfied with the Town's longstanding vegetation trimming rules, have sued to invalidate them. The Complaint basically asks that the Court roll back the clock, ignore the various statutes of limitations, and invalidate more than 15 years worth of intervening zoning regulations passed by the legislature of the Town, and restore to the books a 1981 version of the Town's zoning ordinance. See Para. 73, Second Amended Complaint.

The 1981 zoning ordinance allowed property owners that were adjacent to the Town's land to obtain a permit to trim the vegetation on the Town's land. The 1981 ordinance allowed this cutting to reduce vegetation down to a height of three (3') feet and allowed all species of plants to be cut. The 1981 ordinance thus allowed the vegetation to be given a "flat top". Copy of 1981 Ordinance attached.

Additional development restrictions were put into place on the AL in 1991. See Exhibit 4 to Second Amended Complaint (LOLT Deed Restrictions.) Residents of Sullivan's Island had noticed that the AL had been growing in size through the accretion of sand. See Exhibit 2 to

Second Amended Complaint. These residents surely were familiar with the uproar that had occurred on the Isle of Palms some years earlier when developer J. C. Long sold a new row of buildable lots on land that had accreted between the ocean and what had previously been the first row of houses. Sullivan's Island Town Council took action to preserve the AL for the public and to assure that no similar construction of a "new front row" of houses or other buildings would ever happen. See Exhibits 2 and 4 to Second Amended Complaint. The Town did this by arranging a pair of property transactions with the Low Country Open Land Trust ("LOLT"). See Para. 26 and 27, Second Amended Complaint. First the Town sold the AL property to LOLT. Id Then LOLT sold the same property back to the Town. Id. However, the deed transferring the property from LOLT back to the Town was different than the prior deed because LOLT added a set of deed restrictions. (Compare Exhibits 3 and 4 to Second Amended Complaint).

There were several main components of the deed restrictions. Copy of Deed Restrictions Attached. The deed restrictions were primarily designed to retain the AL property in a natural state and prohibit development. Id. The Parties differ as to whether, as a matter of law, the deed restrictions left the Town with the power to amend the 1981 zoning ordinance governing tree cutting.

The parties do agree, however, that the Town slightly revised its zoning ordinance governing cutting on the AL in 1995. See Para.36, Second Amended Complaint, See also Copy of 1995 Ordinance attached. The 1995 version was *more restrictive* of cutting than was the 1981 version of the ordinance that had been in place when the deed restrictions were imposed. Id., See also, Deposition of Nathan Bluestein, p. 71, l. 14 – 18. It is undisputed that no challenge was ever filed against the 1995 ordinance and the Town and its citizens operated under it for ten years. Deposition of Nathan Bluestein, pp. 78, see also p. 83, l. 5 – 9. Notably, the Bluestein

plaintiffs sought permits on a number of occasions from the Town under the 1995 version of the ordinance and had vegetation on the AL cut.[2] (The Albenesius plaintiffs bought the property in 2009 and hence never had any reason to seek permits under the 1981 or 1995 ordinances.)

It is also undisputed that the final alteration to the Town's zoning ordinance dealing with vegetation cutting on the AL came in 2005. See Para 36, Second Amended Complaint. See also 2005 Ordinance, Copy attached.[3] The 2005 version of the ordinance was also more restrictive (allowed less cutting) than did the 1981 zoning ordinance in place at the time the deed restrictions were imposed.[4] The Town and its citizens operated under the 2005 zoning ordinance for years. Again, the Bluestein plaintiffs themselves secured cutting permits from the Town without complaint under the 2005 ordinance.[5]

It was not until 2010, fifteen years after the Town replaced the 1981 version of the ordinance, that the Plaintiffs filed suit. They now argue that the Town has an obligation to keep the AL property in the *exact* condition it existed on the day the deed was delivered in 1991.[6] Plaintiffs claim that by enforcing the 1995 and 2005 zoning ordinances the Town has injured them by taking away their ocean view and thus devaluing their property since those zoning ordinances differ from the zoning ordinance version in place on the deed restriction date. The

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[2] See Deposition of N. Bluestein, p 14, lines 7 – 12 and p 74, lines 3-14. See also, Deposition of E. Bluestein, p 12, lines 19-21. Nathan Bluestein transcript attached. Ettaleah Bluestein transcript attached. See also cutting permit applications by Bluesteins and predecessor in interest to Albenesius(copies attached).

[3] The Town's Ordinances are available online at http://www.sullivansisland-sc.com/citycodes.aspx

[4] The 2005 Ordinance did, however, allow more cutting than the 1995 ordinance.

[5] See Deposition of N. Bluestein, p 14, lines 7-12, p. 15, lines 2-11 and p 82, lines 15-17.

[6] The Plaintiffs basically argue that "natural state" must mean the precise and exact condition of the property on the day that the deed restrictions were signed in 1991. The Town maintains that such an interpretation of the term "natural state" is not only at odds with the deed as a whole, but a physical impossibility given the changing tides, winds and other forces of nature that impact the property.

Plaintiffs' claims are years too late and thus unreasonable and barred by the Statute of Limitations.

Timeline

Year	Event	Height limit	Species Restrictions
1981	Ordinance	3'	All species may be cut
1991	Deed Restriction	no change	no change
1995 Feb 21	Ordinance change	7'	May only cut 5 listed species
1995 Apr 22	Statute of limitations		
2005 May 17	Ordinance change	5'	no further change
2005 July 16	Statute of limitations under Section 6-29-760(d)		
2008 May 18	Statute of limitations under Section15-3-530 and 39-5-150		
2010	Plaintiffs filed suit		

Summary Argument

The Plaintiffs' claims are statutorily time barred and should be dismissed. Every cause of action in the Plaintiffs' complaint challenges the Town of Sullivan's Island's 2005 zoning ordinance which regulates cutting vegetation on the Town owned accreted lands. South Carolina Code Section 6-29-760(d) mandates that any challenge to a zoning ordinance must be brought within sixty (60) days. The plaintiffs brought this lawsuit in 2010, five years too late. Even ignoring the sixty (60) day limit of Section 6-29-760 the Plaintiffs are still at least two years too late under the general three (3) year statute of limitations. See S.C. Code Ann. 15-3-530 (applicable to contract, breach of contract by fraudulent act and impairment of contract) and S.C. Code Ann. 39-5-150 (SCUTPA). These statutes of limitations prohibit the Plaintiffs from challenging the ordinance or bringing the other ancillary claims they have raised.

Argument

THE PLAINTIFFS' CLAIMS ARE TIME BARRED

Summary Judgment should be granted to the Town because the Plaintiffs' claims are statutorily time barred. South Carolina Code 6-29-760(d)[7] could not be more clear:

> "No challenge to the adequacy of notice or challenge *to the validity of a [zoning] regulation* or map, *or amendment to it*, whether enacted before or after the effective date of this section, *may be made sixty days after the decision of the governing body* if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission." (emphasis added.)

[7] Even without S.C. Code 6-29-760(d), the Plaintiffs would still be time barred by the general three year statute of limitations.

Both the South Carolina Court of Appeals and the Hon. Roger M. Young, have recently applied Section 6-29-760(d) to bar untimely challenges to a zoning ordinance. In Quail Hill, LLC v. County of Richland, 665 S.E.2d 194 (SC App. 2009), the owner of property seeking to put it to a use prohibited under the zoning ordinance claimed that the ordinance was invalid. The Court of Appeals[8] disagreed, applied Section 6-29-760(d), and stated that the buyer was "statutorily barred from challenging the validity of the zoning ordinance at this juncture."[9]

The Plaintiffs claims here are similarly time barred by Section 6-29-760(d). As in Quail Hill, the Plaintiffs seek a declaration that the Town's zoning ordinance is invalid. See Second Amended Complaint, pages 15-17. Plaintiffs' argument is basically that the Zoning Ordinance cannot be enforced by the Town because the 1991 Deed Restrictions nullify or overrule the 1995 and 2005 versions of the ordinance. That, by any definition, is a "challenge to the validity of a [zoning] regulation." See Section 6-29-760(d).

There can be no dispute that the ordinance being challenged is, in fact, a zoning ordinance. The Plaintiffs have admitted it. See Plaintiffs Supplemental Response to Town's Second Request to Admit Nos. 1-4. (Attached hereto). The Plaintiffs themselves even attached the 2005 zoning ordinance as an exhibit to the original complaint to show what the current law is. See Exh. 4 to Original Complaint.

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[8] Though subsequently overruled in part with respect to collateral issues (See Quail Hill, 692 S.E.2d 499 (SC 2010)), the rulings of the Court of Appeals relied upon by the Town here remains intact.

[9] The policy of strict enforcement of relatively short challenge period time limits is well established in South Carolina. In addition to S.C. Code Ann. Section 6-29-760(d), governing zoning challenges, the Legislature similarly enacted S.C. Code Ann. Section 5-3-270, placing a sixty / ninety (60 / 90) day time limit on the filing of annexation challenges. South Carolina's courts have strictly enforced this. See Moon v. City of Greer, 558 S.E.2d 527 (SC App. 2002), see also State ex rel Condon v. City of Columbia, 528 S.E.2d 408 (SC 2000)(noting that the specific 90 day time limit prevails over any more general one.) And the similarity in the treatment of zoning challenges and annexation challenges makes sense. Productive use of land cannot take place where there exists uncertainty as to what rules control. Annexation challenges and zoning challenges both create uncertainty.

Equally clear is the fact that the Plaintiffs' Complaint is untimely under Section 6-29-760(d). There is no dispute that the most recent amendment to the zoning ordinance took place in 2005. See Para 36, Second Amended Complaint. There is also no dispute that this case was filed in 2010.[10] The Plaintiffs admit that this suit is the first time they ever bothered to challenge the zoning ordinances.[11] The five years between the enactment of the 2005 zoning ordinance and the filing of this suit obviously exceeds sixty (60) days. Consequently, Section 6-29-760(d) bars the Plaintiff from challenging the Town's zoning ordinance.[12]

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[10] Note that the Clerk of Court assigned this matter a 2010 case number.

[11] Deposition of N. Bluestein p 74, lines 3-17; p 78, line 17 – p 79, line 9; p 82, line 15 – p 83, line 14. See also, Deposition of T. Albenesius p 43, line 12 – p 45, line 24. See also, Deposition of K. Albenesius, p 7, lines 3-5.

[12] Even equity does not support the Plaintiffs pressing claims here. The Bluestein's claims are barred by Laches. Laches is "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Robinson v. Estate of Eloise Pinkney Harris, 698 S.E.2d 229, 236 (2010). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Id.

Laches has been raised as a defense in the past by Towns sued by landowners over zoning ordinance changes. In Graham v. Town of Loris, 248 S.E.2d 594 (SC 1978), the plaintiffs sued Loris in the late 1970's over a zoning ordinance adopted in 1960. Notably, at least one of the plaintiffs for years prior to suing apparently had complied with the 1960 ordinance by obtaining permits and the like. The Supreme Court upheld the Common Pleas ruling that the Town had made a prima facie showing of laches sufficient to constitute a "meritorious defense" for purposes of setting aside a prior judgment.

The Bluestein Plaintiffs face the same laches problem raised by Loris in the Graham case. The Bluesteins owned their house while the AL was governed by the 1981 ordinance they favor. They also owned their house in 1995 when the AL cutting ordinance amendment was passed. Far from promptly suing the Town to assert their claims, the Bluesteins repeatedly acquiesced to the Town's zoning authority. The Bluesteins pulled cutting permits almost yearly from 1995 to present. Thus, not only did they stay silent with their objections for roughly 15 years, they overtly displayed fealty. These permits conclusively prove that the Bluesteins were on notice of the rules they now complain of. They also conclusively document the passage of an unreasonable amount of time.

The State of South Carolina has recognized the need for certainty and reliability with respect to zoning ordinances. In fact, so strong is the need for governments and citizens to be able to rely on the validity of zoning ordinances that S.C. Code Ann. 6-29-760(d) requires that all challenges to a zoning ordinance be made within sixty (60) days of its enactment. Allowing the Bluesteins to avoid a laches defense here would clearly undermine these important public policy goals.

As for the Plaintiffs Albenesius, interest in the dispute arose so late that they cannot possess the disputed right in the first place. The Plaintiffs' chief contention seems to be that the 1991 deed restrictions created an ongoing right of land owners to have the AL governed by the 1981 "three foot" rule. The problem is, the Albenesius' did not buy 2411 Atlantic until 2009. In other words, they bought the property at a time when the challenged 2005 ordinance was already in place. Mr. Albenesius testified that at the time he purchased the property he was completely unaware of the AL cutting rules (any version) and the deed restrictions. Ms. Albenesius' testimony is even more compelling. She testified in deposition that she knew of the 5' cutting height rule at the time she decided to purchase the house. See Deposition of K. Albenesius a p 25, lines 11 – 16. Thus, the Albenesius' clearly cannot claim to have relied on earlier versions of the rules and cannot claim to have acquired vested rights under outdated prior versions of the rules. Interestingly, the predecessor in interest to Albenesius sought and

The Statute of Limitations found within Section 6-29-760(d) disposes of the majority of the claims in the Plaintiffs' Complaint (Claims 1, 2, 3, 7, and 8). Plaintiffs' First Cause of Action is for Declaratory Judgment that principally requests an order "invalidating all ordinances relating to the Accreted Land passed since February 12, 1991." Second Amended Complaint, Para. 73. This Cause of Action is clearly time barred by the words of the statute. Plaintiffs' Second Cause of Action is for injunctive relief, basically barring the Town from enforcing the ordinances they believe to be contrary to the deed restrictions. See Para 77-82, Second Amended Complaint. But since Section 6-29-760(d) means that the zoning ordinances remain valid, injunctive relief cannot be appropriate. Plaintiffs' Third Cause of Action is for a Writ of Mandamus seeking a court order allowing them to perform certain cutting notwithstanding the Zoning Ordinances. See Para 84 - 87, Second Amended Complaint. Again, since Section 6-29-760(d) means that the zoning ordinances remain valid, it would be impossible to issue such a writ allowing Plaintiffs to ignore those ordinances. Plaintiffs' Seventh Cause of Action seeks a ruling that the conditions that have occurred on the AL as a result of the Zoning Ordinances constitute a nuisance. See Para 116 - 122, Second Amended Complaint. However, since Section 6-29-760(d) means that the Zoning Ordinances are valid the trees protected by the ordinance cannot legally constitute a "nuisance." Finally, Plaintiff's Eighth Cause of Action seeks a ruling that the Town, by unlawful enforcement of invalid Zoning Ordinances, engaged in an inverse condemnation. See Para 124 - 126, Second Amended Complaint. Again, however, since Section 6-29-760(d) means that the Zoning Ordinances *are* valid the Town has not done anything that would constitute inverse condemnation. See Quail Hill, 665 S.E.2d at 198 (noting that since

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obtained permits under the 2005 ordinance, thus displaying the same fealty mentioned above in reference to the laches bar faced by the Bluesteins. Since Albenesius cannot have expected to obtain more rights from the seller than the seller was claiming, it seems that the seller's permitting history guts any claim by the Albenesius' to rights under the 1981 AL ordinance.

Section 6-29-760(D) barred a finding that zoning ordinance was invalid, Plaintiffs could not use asserted invalidity of zoning ordinance to support inverse condemnation claim.)

The three year Statute of Limitations of S.C. Code Ann. 15-3-530 disposes of the Plaintiffs Fourth (Breach of Contract), Fifth (Breach of Contract with Fraudulent Act), and Ninth (Impairment of Contract[13]) causes of action. The Complaint is clear that the Plaintiff feels an alleged 1991 "contract" was violated in 1995 and 2005 when the Town passed a zoning ordinance.[14] This means that the statute of limitations expired in 1998 or 2008, both of which were before the 2010 filing of this lawsuit.[15]

Finally, the three year Statute of Limitations of S.C. Code Ann. 39-5-150 ends the Plaintiff's Sixth Cause of Action (Unfair Trade Practices.) The Plaintiffs claim that the Town devalued their property improperly by failing to let them trim the Accreted Land vegetation. See Para 110, Second Amended Complaint. There is no question that the 1995 and 2005 ordinances are the "way" that the Town prevented the Plaintiffs from cutting as desired. See Para 36 and 43, Second Amended Complaint. As before, at the latest the three year window began in 2005 and expired in 2008, years before suit was filed.

Plaintiffs' references to a public survey, Town correspondence, and allegations of fraud do not change the preceding statute of limitations analysis. See Second Amended Complaint, Para. 100 – 102. None of the fraudulent conduct alleged by Plaintiffs constitutes an official "act" of the town. The Town certainly passed ordinances in 1995 and 2005 that deal with the

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[13] See Anonymous Taxpayer v. South Carolina Department of Revenue, 661 S.E.2d 73, 80 (SC 2008) (Applying three year statute of limitations of S.C. Code Ann. 15-3-530 to Impairment of Contract claim.);

[14] For example, See Second Amended Complaint, Para. 73 (asking for Declaratory Judgment invalidating the 1995 and 2005 ordinances because they conflict with the 1991 alleged promise); Para. 128 – 129("the 1995 and 2005 changes in the law ... impair the preexisting contractual relationship.".

[15] Plaintiffs cannot claim to have been unaware of the impact of the 1995 and 2005 ordinance changes. The Plaintiffs Bluestein repeatedly applied for permits to cut under these ordinances. See cutting permit applications (copies attached).The predecessors in interest of the Albenesius residence similarly applied for permits. See Id. The Statute of Limitations on these claims actually expired before the Albenesius' even bought the property!

Accreted Land. These were open, publicly known, legislative **acts**. The Plaintiffs, perhaps recognizing this statute of limitations problem, try to argue that the "fraudulent act" is communication between Town officials and a contractor working for the Town to study the Accreted Land and gather community input. See Second Amended Complaint at Para 100 – 102. Basically Plaintiffs claim that the Town told the consultant to ask some questions, but not others, and to communicate with the Town (consultant's client) rather than directly with citizens. Id. But there is no legal or governmental requirement that the Town send out any questionnaire or engage in any particular method of fact finding. The Town's elected Council may consider whatever information it desires in making its decision – and that may include information that Plaintiffs believe inaccurate or even biased. At the end of the day, Plaintiffs' recourse is at the ballot box if Plaintiffs believe that Council is making bad decisions based on inaccurate data.

Plaintiffs' alleged "fraudulent acts" are even more baffling here in light of the fact that the allegedly biased data gathering is related to potential future legislation that has never been finalized or passed as a law. The alleged fraudulent acts have nothing to do with the 1995 or 2005 ordinances that the Plaintiffs erroneously claim violate the deed. See Para. 44, 45, 46, 53 – 57, Second Amended Complaint. The alleged fraudulent acts reflect to the fact that the Town has from time to time given thought to amending the 2005 ordinance. Id. Not only has this amendment never occurred, no agreement has ever been reached as to what the amended rules would even be. See Para 45, Second Amended Complaint. Thus, what Plaintiffs are complaining of is core political debate that might or might not ever result in legislation being passed. The claim about the inchoate legislative debate is unripe and the claims about the actual "acts" (i.e. the 1995 and 2005 ordinances) are untimely.

The more recent alleged conduct also cannot solve the statute of limitations problem for Plaintiffs because the conduct alleged is actually immune from suit. See S.C. Code 15-78-60 (1) ("legislative ... action or inaction"); (2) "administrative action or inaction of a legislative ... nature."); (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.")

Finally, the questionnaire to which the Plaintiffs point as a "fraudulent act"[16] cannot, by law, constitute an "act" of Town Council or fraud. South Carolina Code Section 5-7-260 states that certain "acts" of Council must be done by ordinance and that in all other matters the Council "may act either by ordinance or resolution." The questionnaire is neither a resolution nor ordinance – it therefore cannot be an "act" of Town Council. Even if it were, the document is plain on its face and thus not deceptive or fraudulent. Besides, even if there were some defect in the wording of the questionnaire, the document was designed to obtain information for Council's use and plaintiffs would have no standing to complain. Finally, despite the Plaintiffs' wishes, the questionnaire is simply not relevant to any issue in this case. Cutting on the AL is governed by the 2005 ordinance. Any alleged defect that occurred years later as Council thought about the possibility of another change has nothing to do with the law that is actually in effect.

MANDAMUS ACTION IS BARRED BY PLAINTIFFS' UNREASONABLE DELAY

The Plaintiffs unreasonable delay in filing the mandamus claim bars relief from being granted. Actions seeking mandamus are not, strictly speaking, subject to a statute of limitations. See Godwin v. Carrigan, 87 S.E.2d 471 (SC 1955). However, mandamus may still be denied

[16] See Exhibit 17 to Second Amended Complaint.

where the Plaintiff delayed unreasonably in bringing the action. Id. at 475. In Godwin the Town of Summerton installed a sewer system during the 1930's partially on land owned by Plaintiff. It was not until 1954 that Plaintiff filed suit seeking to force the Town to condemn the property and compensate him accordingly. The Court found this delay unreasonable and noted the delay as an additional ground supporting its refusal to issue a writ of mandamus.

The Plaintiffs in this case also delayed unreasonably. The deed restrictions went into effect in 1991. See Exhibit 4 to Second Amended Complaint. The Town changed the applicable zoning ordinance in 1995. See Para. 36, Second Amended Complaint. No suit was brought for fifteen years. That delay is unreasonable and, in itself, constitutes a ground by which the mandamus may be denied.

This 26 day of Feb., 2014

J. Brady Hair
Derk Van Raalte (9286)
PO Box 61896
North Charleston, SC 29419
843-572-8700
843-745-1082
derk@bradyhair.com

Attorneys for the Defendants

Sullivan's Island

Cutting Permits related to Albenesius and Bluestein properties

511
PERMIT #

PERMIT FOR TRIMMING & PRUNING

DATE OF PERMIT: Albenesius

EXPIRATION DATE OF PERMIT:

LEGAL DESCRIPTION OF PROPERTY ADJACENT TO RC-1 AREA TO BE TRIMMED & PRUNED (LOT & BLOCK):

decided not to do it Feb. 2010

OWNER(S) NAME & PROPERTY ADDRESS:

PHONE NUMBER:

CONTRACTOR'S NAME & ADDRESS: Yardworks
P.O. Box 733 Sullivan's Island

PHONE #: 843-200-7617

CONTRACTOR CHIEF EXECUTIVE OR OWNER: Laurie Ulmer

PERFORMANCE BOND (FOR ABOVE DESCRIBED PROPERTY): NAME OF COMPANY:

CASH BOND RECEIVED BY TOWN (FOR ABOVE DESCRIBED PROPERTY): DATE:

PERMIT FEE ($250.00) received by Town: DATE:

CONSULTANT NAME: Jeff Jackson, Lowcountry Roots, LLC

ADDRESS: 1865 Palmetto Isle Drive, Mt. Pleasant, SC 29466

PHONE NUMBER: 843-478-5827

CONTRACTOR APPROVED BY TSI DATE:

PERMIT ISSUED BY: TOWN OF SULLIVAN'S ISLAND

BY: ~~KENT PRAUSE~~ Randy Robinson

Off-req#1245

Town of Sullivan's Island

CERTIFICATE OF TRIMMING AND PRUNING

OFFICE OF ZONING ADMINISTRATOR

This certificate issued pursuant to the requirements of the Zoning Ordinance of the Town of Sullivan's Island, Charleston County, South Carolina, certifying that the trimming and pruning of vegetation is in compliance with the various requirements of the Town of Sullivan's Island regulating trimming and pruning in the RC-1A, RC-1C and RC-1E areas.

Permit Number 487

Owner:		Contractor:	
Name	Nathan Bluestein/ Dr. Ettaleah Bluestein	Name	P.O. Mead
Address	2513 Atlantic ave.	Address	

TMS# TMS 529-10-00-070

Lot/Block Number Lot 9-P

By _____ Consultant

Date 12/9/09

By Randy Robertson Zoning Administrator

Date 12-9-09

487
Application #

APPLICATION FOR TRIMMING & PRUNING
SEC. 21-71 CODE OF ORDINANCE
FOR THE TOWN OF SULLIVAN'S ISLAND

DATE OF APPLICATION:

OWNER'S NAME	Nathan Bluestein/ Dr. Eltaleah Bluestein
PROPERTY ADDRESS	2513 Atlantic ave.
MAILING ADDRESS	
PHONE NUMBER	843-883-9909
DESCRIPTION OF PROPERTY	2513 Atlantic Ave.
ADJACENT TO RC-1 AREA	TMS 529-10-00-070
TO BE TRIMMED & PRUNED	Lot 9-P
REQUESTED TIME PERIOD FOR WORK TO BE DONE	Trimming &Pruning
CONTRACTOR'S NAME	P.O. Mead
CONTRACTOR'S ADDRESS	
CONTRACTOR'S PHONE #	
LICENSE NUMBER	
CONTRACTOR'S SUPERVISOR	
CONTRACTOR'S WORKMAN'S COMPENSATION INSURANCE CARRIER & ADDRESS	
CONTRACTOR(S) LIABILITY INSURANCE CARRIER & ADDRESS ($1,000,000 Coverage	
CONTRACTOR(S) CHIEF EXECUTIVE OR OWNER & ADDRESS (Individually liable for violations)	

☐ CONTRACTOR(S) PERFORMAN NAME:
☒ CASH BOND DATE: CK#/CR #: PAYEE NAME:

PERMIT FEE ($250.00) received DATE: CK#/CR #: PAYEE NAME:

WE, THE OWNER(S), CONTRACTOR AND CHIEF EXECUTIVE OR OWNER ACKNOWLEDGE AND AGREE THAT THE PERMIT, IF ISSUED, ALLOWS ONLY THE CONTRACTOR ON THIS APPLICATION AND ITS/HIS EMPLOYEES TO PERFORM WORK. ANY WORK PERFORMED BY SOMEONE OTHER THAN THE CONTRACTOR OR ITS/HIS EMPLOYEES SHALL CONSTITUTE A VIOLATION UNDER SECTION 21-71. WE DO HEREBY FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ THE ENTIRE ORDINANCE SECTION 21-71 AND UNDERSTAND THE TERMS AND CONDITIONS AND THE CONSEQUENCES OF ANY VIOLATION THEREOF, AND WE FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTAND THE ENDEMNITY AND BOND AGREEMENT ATTACHED HERETO AND MARKED EXHIBIT "A" AND AGREE TO BE BOUND AND OBLIGATED TO THE TERMS THEREOF.

P.O. Mead (DATE)
CONTRACTOR:
BY:
It's Chief Executive/Principal or Owner

X (DATE)
Owner Nathan Bluestein/ Dr. Eltaleah Bluestein 12/21/18

(DATE)
Owner

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) INDEMNITY AND BOND AGREEMENT
COUNTY OF CHARLESTON)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor does hereby certify, acknowledge and agree as follows:

(1) Bond. (INITIAL EITHER A OR B)

_____ a. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Performance Bond with _____ as Surety;

_____ b. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Cash Bond;

With the Town of Sullivan's Island for the purposes of insuring the Contractor's adherence to the terms, conditions and regulations of Sections 21-68 through 21-73 of the Ordinances for the Town of Sullivan's Island relating to trimming and pruning trees for the owners of the real property ascribed on the Application attached hereto. A separate Bond is required for each Permit issued.

(2) That he/it read the entire Ordinance.

(3) In the event Contractor or any of its agents, officers, employees or anyone working under his/its supervision violates any term or condition of the above referenced Ordinance, the Bond shall be forfeited to the Town of Sullivan's Island with the Town of Sullivan's Island having sole discretion to apply the Cash or Performance Bond for improvement to the RC-1 area or in any manner it sees fit consistent with Sections 21-68 through 21-73 including, but not limited to, the right to pay the cost of mitigation and/or the replacement of any excessively trimmed or pruned tree(s) or the replacement of any tree(s) damaged or destroyed which was prohibited from being cut or pruned under the said Ordinance;

(4) He/it understands that if the cost of mitigation or replacement of damaged or destroyed trees does not equal the amount of the Bond, said Bond is nevertheless forfeited in its entirety and the Town of Sullivan's Island has the right to utilize such proceeds of the Bond in any manner consistent with Sections 21-68 through 21-73.

(5) In the event the proceeds applied by the Town of Sullivan's Island from the forfeiture of the Bond are not sufficient to cover the replacement of vegetation under mitigation, the Contractor shall remain liable and shall pay to the Town all additional costs so incurred.

(6) That the forfeiture of the Bond and any additional cost of mitigation are in addition to any penalty assessed against the Contractor or any of its agents, officers, employees or anyone working under his/its supervision under Section 21-71G.

(7) That the Bond will be returned only after a Certificate of Completion has been issued which states that all work was performed in accordance with all terms and conditions of the Ordinance.

By: _____
Chief Executive, Principal, or Owner of
Contracting Company

_____
Name of Contracting Company

I, P.O. Mead do hereby certify that I am the principal, chief executive or the owner of the above contracting company and that for valuable consideration, the receipt and sufficiency of which is hereby acknowledged do hereby agree to be personally and individually liable for any mitigation cost, penalties or damage resulting from any violation of the above referenced Ordinance caused by the Contractor or any of its agents, officers, employees or any one working under his/its supervision. More specifically, I do further acknowledge and agree:

(a) That in the event the Performance Bond is not sufficient to pay the cost of replacement of vegetation under mitigation as above described that I shall pay to the Town of Sullivan's Island within ten (10) days of receipt of assessment by the Town the cost of the mitigation that is in excess of the Performance Bond;

(b) If any penalty or fine is assessed against the Contractor or any of its agents, officers, employees or anyone working under his/its supervision and the penalty or fine is not paid within ten (10) days of assessment, then I will personally pay the amount of such fine or penalty to the Town of Sullivan's Island within ten (10) days after notice of non-payment;

I further acknowledge and agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

By: P.O. Mead

Chief Executive, Principal or Owner of Contracting Company

Mead Tree Service Inc

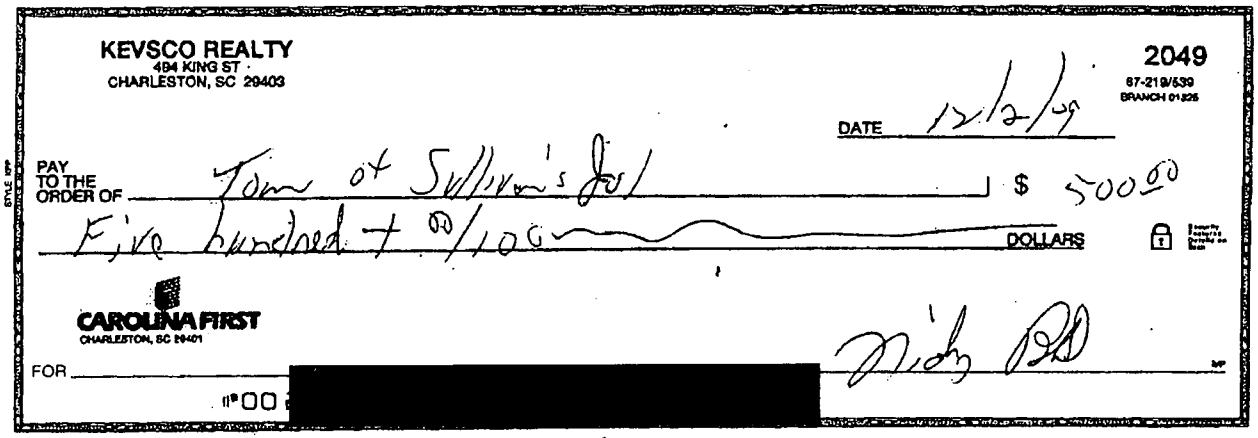
Name of Contracting Company

We, the undersigned Owners, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal, or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

By: X _____
Owner

_____
Owner

Bluestein + Krell



KEVSCO REALTY
494 KING ST
CHARLESTON, SC 29403

2049
67-219/539
BRANCH 01325

DATE 12/2/09

PAY TO THE ORDER OF Town of Sullivan's Isl $ 500.00

Five hundred + 00/100 DOLLARS

CAROLINA FIRST
CHARLESTON, SC 29401

FOR [redacted]

Nicky Bell

Deff - Reg 320

Town of Sullivan's Island

CERTIFICATE OF TRIMMING AND PRUNING

OFFICE OF ZONING ADMINISTRATOR

This certificate issued pursuant to the requirements of the Zoning Ordinance of the Town of Sullivan's Island, Charleston County, South Carolina, certifying that the trimming and pruning of vegetation is in compliance with the various requirements of the Town of Sullivan's Island regulating trimming and pruning in the RC-1A, RC-1C and RC-1E areas.

Permit Number 465

Owner:		Contractor:	
Name	Nathan Bluestein/ Dr. Eltaleah Bluestein	Name	P.O. Mead
Address	2513 Atlantic ave.	Address	

TMS# TMS 529-10-00-070

Lot/Block Number Lot 9-P

By _____ Consultant

Date 2/24/09

By Kent Prausefem Zoning Administrator

Date 2-24-09

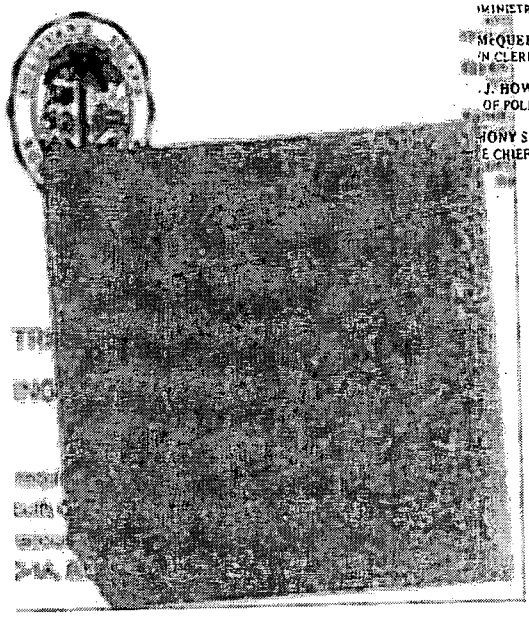
CARL J. SMITH
MAYOR

TOWN OF SULLIVAN'S ISLAND

LAWRENCE A. DODDS
TOWN ATTORNEY

Y BENKE
MINISTRATOR
M. QUEENEY
N CLERK
J. HOWARD
OF POLICE
HONY STITH
E CHIEF

TOWN COUNCIL
PATRICK O'NEIL, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MICHAEL PERKIS
EVERETT PRESSON
MARY JANE WATSON



CERTIFICATE OF

OFFICE OF ZON

This certificate issued pursuant to the
Town of Sullivan's Island, Charleston County, S
pruning of vegetation is in compliance with the v
Island regulating trimming and pruning in the RC

Permit Number 404

Owner:

Name Nathan Bluestein/ Dr. Eltaleah Bluestein

Address 2513 Atlantic ave.

Contractor:

Name ~~Green Tree Arbor care~~ Arborscape

Address P.O.Box 510, ohns Island, SC 29455

TMS# TMS 529-10-00-070

Lot/Block Number Lot 9-P

By _____
Consultant

Date_____

By _____
Zoning Administrator

Date_____

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-5198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

404
Application #

APPLICATION FOR TRIMMING & PRUNING
SEC. 21-71 CODE OF ORDINANCE
FOR THE TOWN OF SULLIVAN'S ISLAND

DATE OF APPLICATION: 1-23-08

OWNER'S NAME	Nathan Bluestein/ Dr. Eltaleah Bluestein
PROPERTY ADDRESS	2513 Atlantic ave.
MAILING ADDRESS	
PHONE NUMBER	843-883-9909
DESCRIPTION OF PROPERTY	2513 Atlantic Ave.
ADJACENT TO RC-1 AREA	TMS 529-10-00-070
TO BE TRIMMED & PRUNED	Lot 9-P
REQUESTED TIME PERIOD	
FOR WORK TO BE DONE	Trimming &Pruning
CONTRACTOR'S NAME	~~Green Tree Arbor Care~~ Arborscape
CONTRACTOR'S ADDRESS	P.O.Box 510, ohns Island, SC 29455
CONTRACTOR'S PHONE #	843-568-8733
LICENSE NUMBER	9914
CONTRACTOR'S SUPERVISOR	
CONTRACTOR'S WORKMAN'S COMPENSATION INSURANCE CARRIER & ADDRESS	~~Urquit Morris State Farm~~ PC+L Agency Inc ~~1700 Ashley River Road~~ 3125 Ashley Phosphate Suite 101 Charleston, ~~SC 29407~~ SC 29418
CONTRACTOR(S) LIABILITY INSURANCE CARRIER & ADDRESS ($1,000,000 Coverage)	~~The Steadman Agency - Nautilus Insur. Co.~~ First Carolina Ins. Assoc. ~~P.O. Box 1487~~ 761 Dorchester Rd, Suite 230 ~~Walterboro, SC 29488~~ N Chas SC 29420
CONTRACTOR(S) CHIEF EXECUTIVE OR OWNER & ADDRESS (individually liable for violations)	Ary Fun

☐ CONTRACTOR(S) PERFORMANCE BOND NAME:

☒ CASH BOND DATE: CK#/CR #: PAYEE NAME:

PERMIT FEE ($250.00) received by Town DATE: CK#/CR #: PAYEE NAME:

WE, THE OWNER(S), CONTRACTOR AND CHIEF EXECUTIVE OR OWNER ACKNOWLEDGE AND AGREE THAT THE PERMIT, IF ISSUED, ALLOWS ONLY THE CONTRACTOR ON THIS APPLICATION AND ITS/HIS EMPLOYEES TO PERFORM WORK. ANY WORK PERFORMED BY SOMEONE OTHER THAN THE CONTRACTOR OR ITS/HIS EMPLOYEES SHALL CONSTITUTE A VIOLATION UNDER SECTION 21-71. WE DO HEREBY FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ THE ENTIRE ORDINANCE SECTION 21-71 AND UNDERSTAND THE TERMS AND CONDITIONS AND THE CONSEQUENCES OF ANY VIOLATION THEREOF, AND WE FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTAND THE ENDEMNITY AND BOND AGREEMENT ATTACHED HERETO AND MARKED EXHIBIT "A" AND AGREE TO BE BOUND AND OBLIGATED TO THE TERMS THEREOF.

Keith Chesnutt (DATE)

CONTRACTOR: ~~Green Tree Arbor care~~ Arborscape

BY: It's Chief Executive/Principal or Owner

X Nathan Bluestein (DATE) 1/23/08

Owner Nathan Bluestein/ Dr. Eltaleah Bluestein

(DATE)

Owner

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) INDEMNITY AND BOND AGREEMENT
COUNTY OF CHARLESTON)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor does hereby certify, acknowledge and agree as follows:

(1) Bond. (INITIAL EITHER A OR B)

_____ a. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Performance Bond with _____ as Surety;

_____ b. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Cash Bond;

with the Town of Sullivan's Island for the purposes of insuring the Contractor's adherence to the terms, conditions and regulations of Section 21-39 of the Ordinances for the Town of Sullivan's Island relating to trimming and pruning trees for the owners of the real property ascribed on the Application attached hereto. A separate Bond is required for each Permit issued.

(2) That he/it read the entire Ordinance.

(3) In the event Contractor or any of its agents, officers, employees or any one working under his/its supervision violates any term or condition of the above referenced Ordinance, the Bond shall be forfeited to the Town of Sullivan's Island with the Town of Sullivan's Island having sole discretion to apply the Cash or Performance Bond for improvement to the RC-1 area or in any manner it sees fit consistent with Sections 21-68 through 21-72 including, but not limited to, the right to pay the cost of mitigation and/or the replacement of any excessively trimmed or pruned tree(s) or for the replacment of any tree(s) damaged or destroyed which was prohibited from being cut or pruned under the said Ordinance;

(4) He/it understands that if the cost of mitigation or replacement of damaged or destroyed trees does not equal the amount of the Bond, said Bond is nevertheless forfeited in its entirety and the Town of Sullivan's Island has the right to utilize such proceeds of the Bond in any manner consistent with Sections 21-68 through 21-72.

(5) In the event the proceeds applied by the Town of Sullivan's Island from the forfeiture of the Bond are not sufficient to cover the replacement of vegetation under mitigation, the Contractor shall remain liable and shall pay to the Town all additional costs so incurred.

(6) That the forfeiture of the Bond and any additional cost of mitigation are in addition to any penalty assessed against the Contractor or any of its agents, officers, employees or any one working under his/its supervision under Section 21-71G.

(7) That the Bond will be returned only after a Certificate of Completion has been issued which states that all work was performed in accordance with all term and conditions of the Ordinance.

By: _____
Chief Executive, Principal or Owner of

_____
(Contracting Company)

I, Keith Christmas, do hereby certify that I am the principal, the chief executive or the owner of the above contracting company and that for valuable consideration, the receipt and sufficiency of which is hereby acknowledged do hereby agree to be personally and individually liable for any mitigation cost, penalties or damage resulting from any violation of the above referenced Ordinance caused by the Contractor or any of its agents, officers, employees or any one working under his/its supervision. More specifically, I do further acknowledge and agree:

(a) That in the event the Performance Bond is not sufficient to pay the cost of replacement of vegetation under mitigation as above described that I shall pay to the Town of Sullivan's Island within ten (10) days of receipt of assessment by the Town the cost of the mitigation that is in excess of the Performance Bond;

(b) If any penalty or fine is assessed against the Contractor or any of its agents, officers, employees or any one working under his/its supervision and the penalty or fine is not paid within ten (10) days of assessment, then I will personally pay the amount of such fine or penalty to the Town of Sullivan's Island within ten (10) days after notice of non-payment;

I further acknowledge and agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

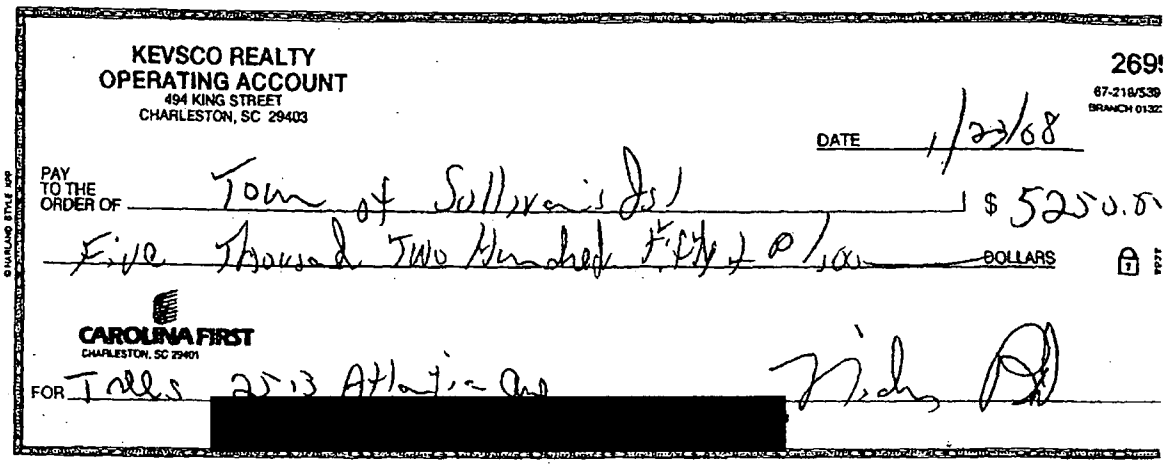
By: Keith Christmas
Chief Executive, Principal or Owner of

(Contracting Company)

We, the undersigned Owners, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

X By: _____
OWNER

_____
OWNER



KEVSCO REALTY
OPERATING ACCOUNT
494 KING STREET
CHARLESTON, SC 29403

269
67-218/539
BRANCH 0132

DATE 1/22/68

PAY TO THE ORDER OF Town of Sullivan's Isl $ 5250.00

Five Thousand Two Hundred Fifty & 00/100 DOLLARS

CAROLINA FIRST
CHARLESTON, SC 29401

FOR Tolls 2513 Atlantic Ave [redacted]

CARL J. SMITH
MAYOR

TOWN COUNCIL
PATRICK O'NEIL, MAYOR PRO-TEM
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BUDDY HOWLE
DEBRA HAZEN-MARTIN
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EVERETT PRESSON

TOWN OF SULLIVAN'S ISLAND

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TOWN ATTORNEY

ANDY BENKE
TOWN ADMINISTRATOR

ELLEN McQUEENEY
TOWN CLERK

DANIEL J. HOWARD
CHIEF OF POLICE

M. ANTHONY STITH
FIRE CHIEF

CERTIFICATE OF TRIMMING AND PRUNING

OFFICE OF ZONING ADMINISTRATOR

This certificate issued pursuant to the requirements of the Zoning Ordinance of the Town of Sullivan's Island, Charleston County, South Carolina, certifying that the trimming and pruning of vegetation is in compliance with the various requirements of the Town of Sullivan's Island regulating trimming and pruning in the RC-1A, RC-1C and RC-1E areas.

Permit Number 348

Owner:

Name Nathan Bluestein/ Dr. Eltaleah Bluestein

Address 2513 Atlantic ave.

Contractor:

Name Green Tree Arbor care

Address P.O.Box 510, ohns Island, SC 29455

TMS# TMS 529-10-00-070

Lot/Block Number Lot 9-P

By _____
Consultant

Date 2/26/07

By Kent Pruessem
Zoning Administrator

Date 2-28-07

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

CARL J. SMITH
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Permit Number 322

Owner:

Name Nathan Bluestein/ Dr. Ettaleah Bluestein

Address 2513 Atlantic ave.

Contractor:

Name Green Tree Arbor care

Address P.O.Box 510, ohns Island, SC 29455

TMS# TMS 529-10-00-070

Lot/Block Number Lot 9-P

By _____
Consultant

Date 2/10/06

By Kent Prausefem
Zoning Administrator

Date 2/10/06

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
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J. MARSHALL STITH
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WILLIAM J. WOOD

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TOWN CLERK

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Permit Number 285

Owner:

Name Nathan Bluestein

Address 2513 Atlantic Avenue
Sullivan's Island

TMS# 529-10-00-070

Lot/Block Number 9-P

By _____
Consultant

Date 2/16/05

Contractor:

Name Green Tree Arbor Care

Address PO Box 510
John's Island 29455

By Kent Praussefen
Zoning Administrator

Date 2-16-05

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WILLIAM J. WOOD

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FIRE CHIEF

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FAX (843) 883-3009

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Permit Number: 228

Owner:

Name Nathan Bluestein

Address 2513 Atlantic Ave.
Sullivans Island

TMS# 529-10-00-070

Lot/block Number 9-P

By _____
Consultant

Date: 2/2/04

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd
Mt Pleasant 29464

By _____
Zoning Administrator

Date: _____

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
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Permit Number: 204

Owner:

Name Ettaleah C. Bluestein

Address 2513 Atlantic Ave.
Sullivan's Island SC

TMS# 529-10-00-070

Lot/block Number 9P

By _____
Consultant

Date: 2/27/03

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd.
Mt. Pleasant SC 29464

By _____
Zoning Administrator

Date: 2/27/03

J. MARSHAL[illegible]ITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
C. MELVIN ANDEREGG
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Permit Number: 148

Owner:

Name Ettaleah Bluestein

Address 2513 Atlantic Ave

Sullivan's Island, SC 29482

TMS# 529-10-00-070

Lot/block Number 9P

By _____
Consultant

Date: 1/3/02

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd.

Mt. Pleasant, SC 29464

By W. Kent Krause
Zoning Administrator

Date: 1/10/02

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
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Permit Number: 118

Owner:

Name Ettaleah C. Bluestein

Address 2513 Atlantic Ave.

Sullivan's Island, SC 29482

TMS# 529-10-00-070

Lot/block Number 9-P

By _____
Consultant

Date: 1/25/01

Contractor:

Name Jep Welsh

Address 954 Tall Pine Road

Mt. Pleasant, SC 29464

By W. Kent Prause
Zoning Administrator

Date: 1/25/01

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
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SULLIVAN'S ISLAND, S.C. 29482

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Permit number: 109

Owner:

Name Ettaleah C. Bluestein

Address 2513 Atlantic Ave.

Sullivan's Island, S.C. 29482

TMS# 529-10-00-070

Lot/block Number 9-P

By _____
Consultant

Date: 2/29/00

Contractor:

Name Jep Welsh

Address 954 Tall Pine Road

Mt. Pleasant, S.C. 29464

By Kent Krause
Zoning Administrator

Date: 2/29/00

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
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Permit number: 94

Owner:

Name Stalcah C. Bluestein

Address 2513 Atlantic Ave.
Sullivan's Is. SC

Contractor:

Name Jep Welsh

Address 954 Tall Pine Road
Mt. Pleasant, SC

TMS# 529-10-00/70

Lot/block Number 9-P

By _____
Consultant

Date: 2/23/99

By _____
Zoning Administrator

Date: 2/23/99

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
WILLIAM J. WOOD, MAYOR PRO-TEM
DAVID A. DEANTONIO
DEBRA HAZEN-MARTIN
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Permit number: 6

Owner:

Name Ettaleah Bluestein

Address 2513 Atlantic Ave.

Sullivan's Island, SC

Contractor:

Name Jep Welsh

Address 1479 Pocahontas St.

Mt. Pleasant, SC 29464

TMS# 529-10-00/70

Lot/block Number 9P

By _____
Consultant

Date: 3/7/95

By _____
Zoning Administrator

Date: 3-7-95

Jeff Reg 277
Ostrover Reg 279

Town of Sullivan's Island

CERTIFICATE OF TRIMMING AND PRUNING

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Permit Number 444

Owner:

Name Julie Ostrover

Address 2411 Atlantic

TMS# _____

Lot/Block Number _____

By _____ Consultant

Date 2/6/09

Contractor:

Name Yardworks

Address P.O. Box 733 Sullivan's Island, SC

By _____ Zoning Administrator

Date 2/6/09

444
Application #

APPLICATION FOR TRIMMING & PRUNING
SEC. 21-71 CODE OF ORDINANCE
FOR THE TOWN OF SULLIVAN'S ISLAND

DATE OF APPLICATION: 1-23-09

OWNER'S NAME	Julie Ostrover
PROPERTY ADDRESS	2411 Atlantic
MAILING ADDRESS	
PHONE NUMBER	203-661-2430
DESCRIPTION OF PROPERTY ADJACENT TO RC-1 AREA TO BE TRIMMED & PRUNED	2411 Atlantic
REQUESTED TIME PERIOD FOR WORK TO BE DONE	Trimming & Pruning
CONTRACTOR'S NAME	Yardworks
CONTRACTOR'S ADDRESS	P.O. Box 733 Sullivan's Island, SC
CONTRACTOR'S PHONE #	843-200-7817
LICENSE NUMBER	
CONTRACTOR'S SUPERVISOR	Laurie Ulmer
CONTRACTOR'S WORKMAN'S COMPENSATION INSURANCE CARRIER & ADDRESS	Pinckney Carter Co.
CONTRACTOR(S) LIABILITY INSURANCE CARRIER & ADDRESS ($1,000,000 Coverage)	Pinckney Carter Co.
CONTRACTOR(S) CHIEF EXECUTIVE OR OWNER & ADDRESS (Individually liable for violations)	Laurie Ulmer

☐ CONTRACTOR(S) PERFORMAN NAME: roll over from 2263
☒ CASH BOND DATE: CK#/CR #: PAYEE NAME:

PERMIT FEE ($250.00) received DATE: waiting on CK#/CR #: PAYEE NAME:

WE, THE OWNER(S), CONTRACTOR AND CHIEF EXECUTIVE OR OWNER ACKNOWLEDGE AND AGREE THAT THE PERMIT, IF ISSUED, ALLOWS ONLY THE CONTRACTOR ON THIS APPLICATION AND ITS/HIS EMPLOYEES TO PERFORM WORK. ANY WORK PERFORMED BY SOMEONE OTHER THAN THE CONTRACTOR OR ITS/HIS EMPLOYEES SHALL CONSTITUTE A VIOLATION UNDER SECTION 21-71. WE DO HEREBY FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ THE ENTIRE ORDINANCE SECTION 21-71 AND UNDERSTAND THE TERMS AND CONDITIONS AND THE CONSEQUENCES OF ANY VIOLATION THEREOF, AND WE FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTAND THE ENDEMNITY AND BOND AGREEMENT ATTACHED HERETO AND MARKED EXHIBIT "A" AND AGREE TO BE BOUND AND OBLIGATED TO THE TERMS THEREOF.

(DATE)
CONTRACTOR: Yardworks
BY:
It's Chief Executive/Principal or Owner

(X) Owner Julie Ostrover 1.15.09 (DATE)
Julie Ostrover

(DATE)
Owner

EXHIBIT "A"

full copy for your records

STATE OF SOUTH CAROLINA)
) INDEMNITY AND BOND AGREEMENT
COUNTY OF CHARLESTON)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor does hereby certify, acknowledge and agree as follows:

(1) Bond. (INITIAL EITHER A OR B)

____ a. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Performance Bond with _____as Surety;

____ b. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Cash Bond;

With the Town of Sullivan's Island for the purposes of insuring the Contractor's adherence to the terms, conditions and regulations of Sections 21-68 through 21-73 of the Ordinances for the Town of Sullivan's Island relating to trimming and pruning trees for the owners of the real property ascribed on the Application attached hereto. A separate Bond is required for each Permit issued.

(2) That he/it read the entire Ordinance.

(3) In the event Contractor or any of its agents, officers, employees or anyone working under his/its supervision violates any term or condition of the above referenced Ordinance, the Bond shall be forfeited to the Town of Sullivan's Island with the Town of Sullivan's Island having sole discretion to apply the Cash or Performance Bond for improvement to the RC-1 area or in any manner it sees fit consistent with Sections 21-68 through 21-73 including, but not limited to, the right to pay the cost of mitigation and/or the replacement of any excessively trimmed or pruned tree(s) or the replacement of any tree(s) damaged or destroyed which was prohibited from being cut or pruned under the said Ordinance;

(4) He/it understands that if the cost of mitigation or replacement of damaged or destroyed trees does not equal the amount of the Bond, said Bond is nevertheless forfeited in its entirety and the Town of Sullivan's Island has the right to utilize such proceeds of the Bond in any manner consistent with Sections 21-68 through 21-73.

(5) In the event the proceeds applied by the Town of Sullivan's Island from the forfeiture of the Bond are not sufficient to cover the replacement of vegetation under mitigation, the Contractor shall remain liable and shall pay to the Town all additional costs so incurred.

(6) That the forfeiture of the Bond and any additional cost of mitigation are in addition to any penalty assessed against the Contractor or any of its agents, officers, employees or anyone working under his/its supervision under Section 21-71G.

(7) That the Bond will be returned only after a Certificate of Completion has been issued which states that all work was performed in accordance with all terms and conditions of the Ordinance.

By: _____
Chief Executive, Principal, or Owner of
Contracting Company

_____
Name of Contracting Company

I, David A Sykes do hereby certify that I am the principal, chief executive or the owner of the above contracting company and that for valuable consideration, the receipt and sufficiency of which is hereby acknowledged do hereby agree to be personally and individually liable for any mitigation cost, penalties or damage resulting from any violation of the above referenced Ordinance caused by the Contractor or any of its agents, officers, employees or any one working under his/its supervision. More specifically, I do further acknowledge and agree:

(a) That in the event the Performance Bond is not sufficient to pay the cost of replacement of vegetation under mitigation as above described that I shall pay to the Town of Sullivan's Island within ten (10) days of receipt of assessment by the Town the cost of the mitigation that is in excess of the Performance Bond;

(b) If any penalty or fine is assessed against the Contractor or any of its agents, officers, employees or anyone working under his/its supervision and the penalty or fine is not paid within ten (10) days of assessment, then I will personally pay the amount of such fine or penalty to the Town of Sullivan's Island within ten (10) days after notice of non-payment;

I further acknowledge and agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

By: _____
Chief Executive, Principal or Owner of
Contracting Company

_____
Name of Contracting Company

We, the undersigned Owners, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal, or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

X By: Jane Ostriver
Owner
2411 Atlantic

Owner

DOUGLAS J. OSTROVER
[redacted]
51-36/211 3227
041307320
11629
DATE 2.4.09
PAY TO THE ORDER OF Town of Sullivans Island
$ 250.00
two hundred and fifty + 00/100
DOLLARS
CHASE
JPMorgan Chase Bank, N.A.
Greenwich, Connecticut 06830
www.Chase.com
MEMO
[redacted]
Ostrover

1-2-09

Julie -
There wasn't an answer to your fax machine. If you wish to have the wax myrtles cut, please sign both applications and both bond agreements (page 4) and send back to me with your check.
Each application fee is $250.00. If you post one bond of $5,000, then after the first property is inspected, the bond can be rolled over to the second property.

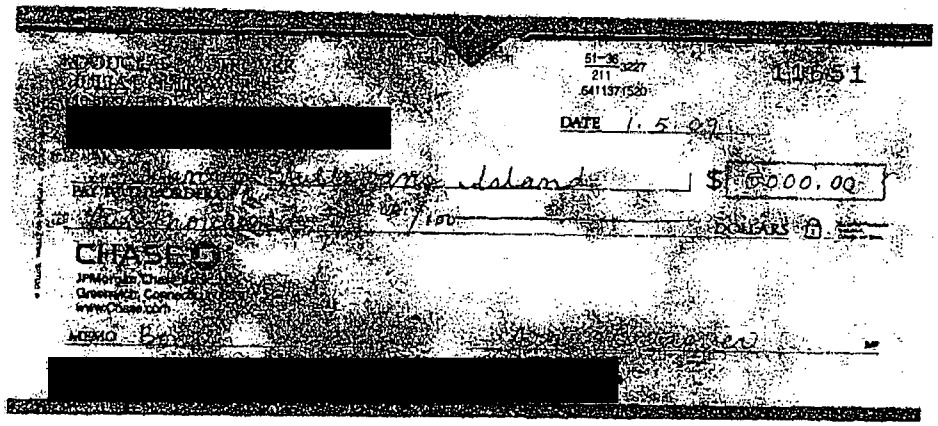
Thanks!
Ellen

Happy New Year!

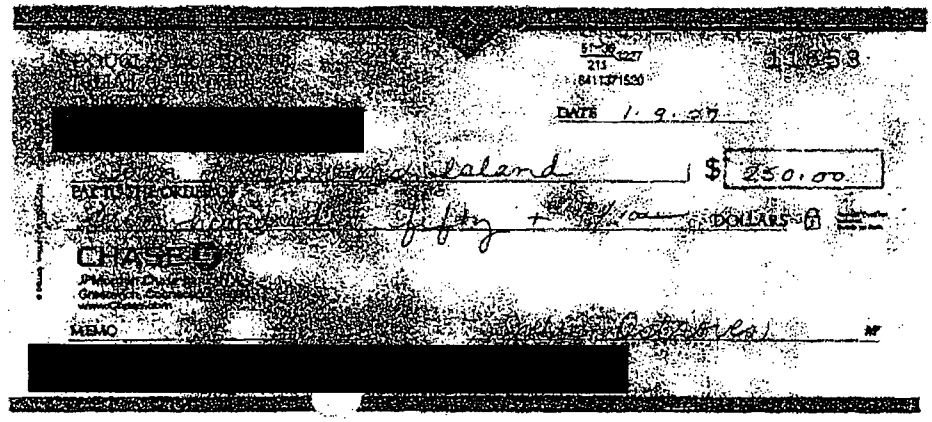
Julie -
Sorry I wasn't clear on the application fee. We need an application fee for each property, but we can roll the bond over to the next property. If you could please drop us another check for $250 -
Thanks!
Ellen

left message 2-3-09

for 2263 Atlantic ↓ then rollover to 2411 Atlantic



2263 Atlantic



Town of Sullivan's Island

CERTIFICATE OF TRIMMING AND PRUNING

OFFICE OF ZONING ADMINISTRATOR

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Permit Number 419

Owner:

Name Julie Ostrover

Address 2411 Atlantic

TMS#

Lot/Block Number

By _____ Consultant

Date 2/15/08

Contractor:

Name Yardworks

Address 954 Tall Pine Rd., Mt. Pleasant, SC 29464

By Kent Prausem Zoning Administrator

Date 2/19/08

CARL J. SMITH
MAYOR

TOWN COUNCIL
PATRICK O'NEIL, MAYOR PRO-TEM
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Permit Number 368

Owner:

Name Julie Ostrover

Address 2411 Atlantic Ave.

TMS# TMS 523-12-00-034

Lot/Block Number Lot 20-E

By _____
Consultant

Date 2/12/07

Contractor:

Name Yardworks

Address 954 Tall Pine Rd., Mt. Pleasant, SC 29464

By Kent Passailaigue
Zoning Administrator

Date 2-12-07

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

CARL J. SMITH
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JANE ELLEN HERRON
DEBRA HAZEN-MARTIN
MICHAEL PERKIS
EVERETT PRESSON

TOWN OF SULLIVAN'S ISLAND

LAWRENCE A. DODDS
TOWN ATTORNEY

ANDY BENKE
TOWN ADMINISTRATOR

ELLEN McQUEENEY
TOWN CLERK

DANIEL J. HOWARD
CHIEF OF POLICE

M. ANTHONY STITH
FIRE CHIEF

CERTIFICATE OF TRIMMING AND PRUNING

OFFICE OF ZONING ADMINISTRATOR

This certificate issued pursuant to the requirements of the Zoning Ordinance of the Town of Sullivan's Island, Charleston County, South Carolina, certifying that the trimming and pruning of vegetation is in compliance with the various requirements of the Town of Sullivan's Island regulating trimming and pruning in the RC-1A, RC-1C and RC-1E areas.

Permit Number 316

Owner:

Name Julie Ostrover

Address 2411 Atlantic Ave.

Contractor:

Name Yardworks

Address 954 Tall Pine Rd., Mt. Pleasant, SC 29464

TMS# TMS 523-12-00-034

Lot/Block Number Lot 20-E

By _____
Consultant

Date 2/3/06

By Kent Pracsejen
Zoning Administrator

Date 2-3-06

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
JANE ELLEN HERRON
DEBRA HAZEN-MARTIN
PATRICK M. O'NEIL
ALYS ANNE WIEDEKE
WILLIAM J. WOOD

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Permit Number 259

Owner:

Name Julie Ostrover

Address ~~1995~~ 2411 Atlantic Ave

Sullivans Island

TMS# 523-12-00-034

Lot/Block Number Lot 20, Area E

By _____
Consultant

Date 12/29/04

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd

Mt Pleasant SC

By Kent Pranzlein
Zoning Administrator

Date 12-30-04

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(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

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Permit Number: 221

Owner:

Name Mark C. Tanenbaum

Address 2413 Atlantic Ave.
Sullivan's Island SC

TMS# 529-10-00-064

Lot/block Number Lot 3-P

By _____
Consultant

Date: 1/27/04

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd
Mt Pleasant SC

By _____
Zoning Administrator

Date: 1-26-04

0221
Application #

APPLICATION FOR TRIMMING & PRUNING
SEC. 21-39 CODE OF ORDINANCE
FOR TOWN OF SULLIVAN'S ISLAND

DATE OF APPLICATION 12-30-03

OWNER'S NAME	Mark C. Tanenbaum
ADDRESS	2413 Atlantic Avenue
PHONE NUMBER	883-3810
DESCRIPTION OF PROPERTY	Lot 3-P
ADJACENT TO RC-1 AREA	TMS 529-10-00-064
TO BE TRIMMED & PRUNED	RC1-A
(RC-1, AREA A, C OR E)	
REQUESTED TIME PERIOD	Trimming + Pruning
FOR WORK TO BE DONE	
CONTRACTOR'S NAME	Jep Welsh
CONTRACTOR'S ADDRESS	954 Tall Pine Road
CONTRACTOR'S PHONE#	881-0400
LICENSE NUMBER	
CONTRACTOR'S SUPERVISOR	Jep Welsh
CONTRACTOR(S) PERFORMANCE BOND	(Name of Company)
	Cash Bond
CONTRACTOR'S WORKMAN'S COMPENSATION INSURANCE CARRIER & ADDRESS	NCCI - Atlantic Division
CONTRACTOR(S) LIABILITY INSURANCE CARRIER & ADDRESS ($1,000,000 Coverage)	The Ohio Casualty Insurance
CONTRACTOR(S) CHIEF EXECUTIVE OR OWNER & ADDRESS (Individually liable for violations)	Jep Welsh

WE, THE OWNER(S), CONTRACTOR AND CHIEF EXECUTIVE OR OWNER ACKNOWLEDGE AND AGREE THAT THE PERMIT, IF ISSUED, ALLOWS ONLY THE CONTRACTOR ON THIS APPLICATION AND ITS/HIS EMPLOYEES TO PERFORM WORK. ANY WORK PERFORMED BY SOMEONE OTHER THAN THE CONTRACTOR OR ITS/HIS EMPLOYEES SHALL CONSTITUTE A VIOLATION UNDER SECTION 21-39. WE DO HEREBY FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ THE ENTIRE ORDINANCE SECTION 21-39 AND UNDERSTAND THE TERMS AND CONDITIONS AND THE CONSEQUENCES OF ANY VIOLATION THEREOF, AND WE DO FURTHER CERTIFY AND ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTAND THE INDEMNITY AND BOND AGREEMENT ATTACHED HERETO AND MARKED EXHIBIT "A" AND AGREE TO BE BOUND AND OBLIGATED TO THE TERMS THEREOF.

(DATE)

CONTRACTOR Jep Welsh

BY: _____
It's Chief Executive/Principal or Owner

_____ (DATE)
Owner

_____ (DATE)
Owner

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
) INDEMNITY AND BOND AGREEMENT
COUNTY OF CHARLESTON)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor does hereby certify, acknowledge and agree as follows:

(1) Bond. (INITIAL EITHER A OR B)

____ a. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Performance Bond with _____ as Surety;

✓ b. That he/it has placed a Five Thousand and No/100 ($5,000.00) Dollars Cash Bond;

with the Town of Sullivan's Island for the purposes of insuring the Contractor's adherence to the terms, conditions and regulations of Section 21-39 of the Ordinances for the Town of Sullivan's Island relating to trimming and pruning trees for the owners of the real property ascribed on the Application attached hereto. A separate Bond is required for each Permit issued.

(2) That he/it read the entire Ordinance.

(3) In the event Contractor or any of its agents, officers, employees or any one working under his/its supervision violates any term or condition of the above referenced Ordinance, the Bond shall be forfeited to the Town of Sullivan's Island with the Town of Sullivan's Island having sole discretion to apply the Cash or Performance Bond for improvement to the RC-1 area or in any manner it sees fit consistent with Sections 21-39 including, but not limited to, the right to pay the cost of mitigation and/or the replacement of any excessively trimmed or pruned tree(s) or for the replacement of any tree(s)

damaged or destroyed which was prohibited from being cut or pruned under the said Ordinance;

(4) He/it understands that if the cost of mitigation or replacement of damaged or destroyed trees does not equal the amount of the Bond, said Bond is nevertheless forfeited in its entirety and the Town of Sullivan's Island has the right to utilize such proceeds of the Bond in any manner consistent with Sections 21-39.

(5) In the event the proceeds applied by the Town of Sullivan's Island from the forfeiture of the Bond are not sufficient to cover the replacement of vegetation under mitigation, the Contractor shall remain liable and shall pay to the Town all additional costs so incurred.

(6) That the forfeiture of the Bond and any additional cost of mitigation are in addition to any penalty assessed against the Contractor or any of its agents, officers, employees or any one working under his/its supervision under section 21-39.1L.

(7) That the Bond will be returned only after a Certificate of Completion has been issued which states that all work was performed in accordance with all term and conditions of the Ordinance.

WITNESS:

_____

_____

By: _____
Chief Executive, Principal or Owner of

_____
(Contracting Company)

I, J.P. Welsh, do hereby certify that I am the principal, the chief executive or the owner of the above contracting company and that for valuable consideration, the receipt and sufficiency of which is hereby acknowledged do hereby agree to be personally and individually liable for any mitigation cost, penalties or damage resulting from any violation of the above referenced Ordinance caused by the Contractor or any of its agents, officers, employees or any one working under his/its supervision. More specifically, I do further acknowledge and agree:

(a) That in the event the Performance Bond is not sufficient to pay the cost of replacement of vegetation under mitigation as above described that I shall pay to the Town of Sullivan's Island within ten (10) days of receipt of assessment by the Town the cost of the mitigation that is in excess of the Performance Bond;

(b) If any penalty or fine is assessed against the Contractor or any of its agents, officers, employees or any one working under his/its supervision and the penalty or fine is not paid within ten (10) days of assessment, then I will personally pay the amount of such fine or penalty to the Town of Sullivan's Island within ten (10) days after notice of non-payment;

I further acknowledge and agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

WITNESS:

_____

_____

By: _____
Chief Executive, Principal or Owner of

J.P. Welsh
(Contracting Company)

We, the undersigned Owners, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

WINTESS:

_____ By: _____
Chief Executive, Principal or Owner of

_____ _____
(Owner)

We, the undersigned Owners, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to indemnify and hold the Town of Sullivan's Island harmless from any action, cause of action, obligations, damages, mitigation requirements, fines, assessments and penalties incurred by the Town of Sullivan's Island for any action taken pursuant to the Permit applied for on the attached Application in derogation of any State, Federal or County law or regulation including, but not limited to, any costs and attorney's fee incurred by the Town of Sullivan's Island.

WITNESS:

_____ By: _____
Chief Executive, Principal or Owner of

_____ _____
(Owner)

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
JANE ELLEN HERRON
DEBRA HAZEN-MARTIN
PATRICK M. O'NEIL
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M. ANTHONY STITH
FIRE CHIEF

P.O. BOX 427
SULLIVAN'S ISLAND, SC 29482

TELEPHONE
(843) 883-3198
FAX (843) 883-3009

December 30, 2003

Mark C. Tanenbaum
406 Station 12th Street
Sullivan's Island, SC 29482

Dear Mark:

I didn't notice until you left the office that you signed the incorrect sheet on the bond agreement. There is also a $250 permit fee in addition to the $5,000 bond.

Please sign the attached and return along with the permit fee. I apologize for the inconvenience.

Sincerely,

Ellen

Ellen McQueeney

MARK C. TANENBAUM
[redacted]

CAROLINA FIRST BANK
CHARLESTON, SC 29401
67-219/539

0765

1/2/2004

Pay to the Order of Town of Sullivan's Island $ **250.00

Two Hundred Fifty and 00/100********** Dollars

Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482

memo Permit Fee

[redacted]

Tamara A. Darrance

© 1994 - 2000 INTUIT INC. # 145 1-800-433-8810

MARK C. TANENBAUM

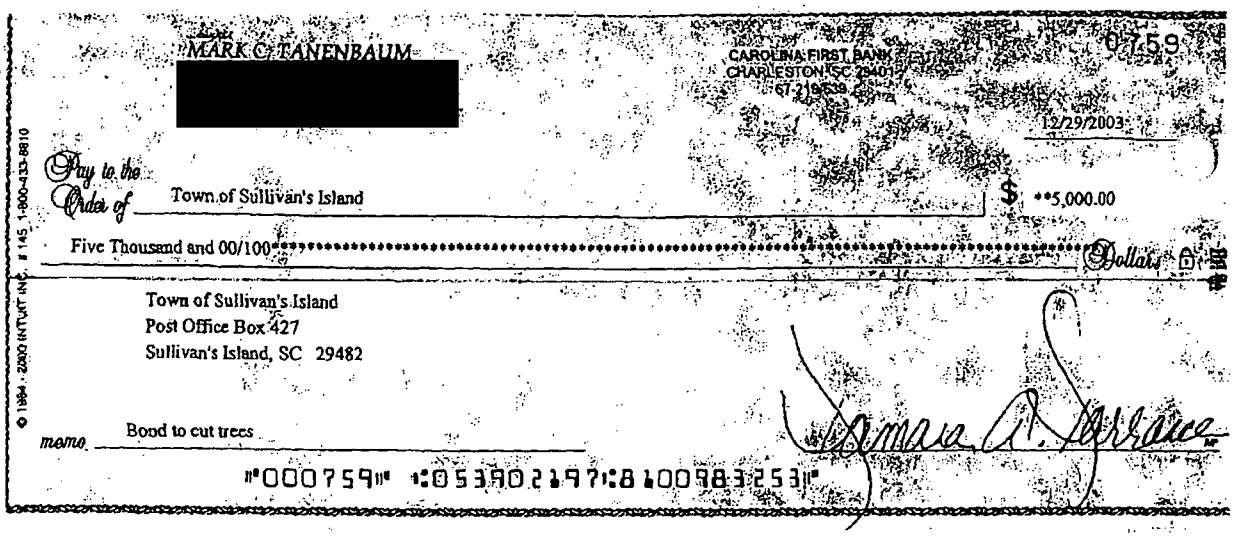
0765

Town of Sullivan's Island

1/2/2004

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
01/02/2004	Bill		250.00	250.00		250.00
					Check Amount	250.00

MCT Personal Checking Permit Fee 250.00



MARK C. TANENBAUM
[redacted]

CAROLINA FIRST BANK
CHARLESTON, SC 29401
67-2/9539

0759

12/29/2003

Pay to the Order of Town of Sullivan's Island $ **5,000.00

Five Thousand and 00/100********** Dollars

Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482

memo Bond to cut trees

"000759" :053902197:8100983253"

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MARK C. TANENBAUM 0759

Town of Sullivan's Island 12/29/2003

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
12/29/2003	Bill		5,000.00	5,000.00		5,000.00
					Check Amount	5,000.00

Trimming #221 app

MCT Personal Checking Bond to cut trees 5,000.00

MARK C. TANENBAUM 0759

Town of Sullivan's Island 12/29/2003

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
12/29/2003	Bill		5,000.00	5,000.00		5,000.00
					Check Amount	5,000.00

PAYMENT RECORD

MCT Personal Checking Bond to cut trees 5,000.00

177654 (6/02)

221

MARK C. TANENBAUM, P.A.
ATTORNEYS AT LAW
241-243 EAST BAY STREET
CHARLESTON, SOUTH CAROLINA 29401

MARK C. TANENBAUM
MIA LAUREN MANESS
STEPHEN A. BUTAJTIS
JONATHAN E. KRELL
CHRISTIAAN A. MARCUM

MAIL
Post Office Box 20757
Charleston, SC 29413-0757

February 12, 2004

VIA FACSIMILE #883-3009

Ms. Ellen McQueeney, Town Clerk
Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482

Re: $5,000 Tree Cutting Bond

Dear Ms. McQueeney:

Please allow my $5,000 bond to stand good for my neighbors, Morton and Evelyn Needle.

Sincerely yours,

Mark C. Tanenbaum

MCT/dvf

F:\mct\PERSONAL\HOUSE\Town SI-bond for Needle.doc-02/12/2004 4:01 PM

TELEPHONE: (843) 577-5100 or 1-800-768-6860
FAX: (843) 722-4688 or (843) 577-5996
WEBSITE: www.tanenbaumlaw.com

E-Mail: mark@tanenbaumlaw.com
E-Mail: mia@tanenbaumlaw.com
E-Mail: steve@tanenbaumlaw.com
E-Mail: jonathan@tanenbaumlaw.com
E-Mail: christiaan@tanenbaumlaw.com

Vend # 347 TOWN OF SULLIVANS ISLAND Check # 1657 001657

Invoice #	Invoice Date	PO #	Description	Total Amt
Bond Reimburse	2/16/2004		MARK TANENBAUM acct-3.935	$5,000.00

TOTAL CHECK: $5,000.00

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

TOWN OF SULLIVANS ISLAND
P.O. BOX 427
SULLIVANS ISLAND, SC 29482

WACHOVIA Wachovia Bank, N.A. Charleston, SC 29401

001657
NUMBER 1657

67-1/532

**********5000 Dollars and 00 cents

DATE 2/16/2004

AMOUNT $5,000.00

PAY TO THE ORDER OF MARK TANENBAUM [redacted]

William J. Wood Jr. M/
Ellen McQueeg CLERK

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

[redacted]

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
PENN L. HAGOOD
DEBRA HAZEN-MARTIN
PATRICK M. O'NEIL
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Permit Number: 191

Owner:

Name Mark C. Tanenbaum

Address 2413 Atlantic Ave.
Sullivan's Island SC

TMS# 529-10-00-064

Lot/block Number Rot 3-P

By _____
Consultant

Date: 1/26/03

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd.
Mt. Pleasant SC

By Kent Pearce
Zoning Administrator

Date: 1-30-03

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
CARL J. SMITH, MAYOR PRO-TEM
C. MELVIN ANDEREGG
PENN L. HAGOOD
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Permit Number: 154

Owner:

Name Mark C. Tannenbaum

Address 2413 Atlantic Ave.

Sullivan's Island, SC 29482

TMS# 529-10-00-064

Lot/block Number 3-P

By _____
Consultant

Date: 12/20/01

Contractor:

Name Jep Welsh

Address 954 Tall Pine Rd.

Mt. Pleasant, SC 29464

By W. Kent Prause
Zoning Administrator

Date: 12/20/01

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
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DEBRA HAZEN-MARTIN
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SULLIVAN'S ISLAND, S.C. 29482

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Permit number: 97

Owner:

Name Mark Tannenbaum

Address 2413 Atlantic Avenue

Sullivan's Island, SC 29482

TMS# 529-10-00-064

Lot/block Number 3P

By WKP for J.J.
Consultant

Date: 12/6/99

Contractor:

Name Jep Welsh

Address 954 Tall Pine Road

Mt. Pleasant, S.C. 29464

By W. Kent Pruse
Zoning Administrator

Date: 12/6/99

J. MARSHALL STITH
MAYOR

TOWN COUNCIL
WILLIAM J. WOOD, MAYOR PRO-TEM
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Permit number: #5

Owner:

Name Mark C. Tannenbaum

Address 2413 Atlantic
Sullivan's Island, SC

TMS# 529-10-00/064

Lot/block Number 3P

By _____
Consultant

Date: 3/2/95

Contractor:

Name Jep Welsh

Address 1479 Pocahontas St.
Mt. Pleasant, SC

By _____
Zoning Administrator

Date: 3-2-95

1995 ORD.

1995 Ord.

Sec. 21-35. General Requirements.

Maximum Building Height: No building or structure shall be erected, altered or moved so as to exceed 38 feet in height. Height shall be measured vertically from the highest point of the structure, excepting any chimney on a building, to the ground level of the grade where the walls or other structural elements intersect with the ground. The height limitations of the Code shall not apply to the church spires, or other similar church features such as belfries, cupolas or domes. In such cases where a lot is below the grade of the nearest street, the lot shall be filled so as to comply with Section 5-16 and Section 7-2 of this Code. In such cases where a lot elevation is two feet or greater above the grade of the nearest street, the total of the grade above and of the height of the structure shall not exceed 40 feet. (1-17-89, 11-20-90)

Sec. 21-36. Double frontage lots.

Subject to the setback requirements of this Ordinance, lots in the GC-OC Zoning District which have commercial frontage on Middle Street and residential frontage on I'on Avenue or Jasper Boulevard may have commercial usage on the half of the lot nearest Middle Street which is zoned commercial on the official Zoning Map, and residential building on the half of the lot fronting on I'on Avenue or on Jasper Boulevard zoned single family residential on the official Zoning Map, as long as the lots continue to be held in one ownership. There shall be no subdivision of these lots. (1-18-82)

Sec. 21-37. Recreation and conservation (RC) area; findings of fact and purposes.

The Town Council of the Town of Sullivan's Island finds that these areas greatly contribute to the health, safety and welfare of the residents of Sullivan's Island and that they provide town citizens as well as visitors, with countless hours of pleasurable activity and rest and relaxation, which is important to the goal of public health, safety and welfare; further, that the boundaries of these areas are constantly shifting over unpredictable periods of time, in that they are composed of sand dunes and vegetation that ceaselessly change, and that these areas are prone to flooding, and, therefore, not suitable to development for any purpose; further, that the Town of Sullivan's Island originated as a health resort for all the people of the State of South Carolina, and that these areas are vital to the purpose, and useful for that purpose only so long as they remain in a natural, undeveloped condition subject to the changing tides; further, that these areas, left in their natural state, provide protection to adjoining landowners and their property from the hazards of high tides and floods caused by hurricanes, tropical storms and seasonal tides; further, that the construction of the Santee-Cooper Diversion Canal and subsequent changes in the volume of water flowing through Charleston Harbor may cause further changes of an unknown nature upon the shoreline of Sullivan's Island, all of which the Town Council find to be a threat to all of the residents and property owners of the Town. Further, the Town Council find that this area is of a particular beauty in its natural state so as to provide aesthetic value necessary to the public health, safety and welfare of island residents and visitors, and in keeping with the historic uses of Sullivan's Island. (8-1-77 and 8-21-78, S675)

Sec. 21-38. Uses in RC districts.

These areas shall be preserved in their natural state, except for the trimming, pruning and cutting of bushes and trees as provided in Section 21-39 below, as an area of recreation and conservation for the purpose of protecting the ecology, the adjoining property, and the environment, and enhancing and protecting the safety and welfare of the Town and its residents. Further, any activity shall be prohibited in these areas which would detract from their natural state, including, but not limited to, the activities stated in Section 21-39, so as to maintain this natural state for the public enjoyment and as protection for the Town and all of its citizens against the dangers and erosion as delineated in Section 21-37, et. seq. (8-1-77 and 8-22-78, S676; 10-20-80, S1)

Sec. 21-39. Area RC-1 restrictions.

Sec. 21-39.1A The RC-1 area as depicted upon the official Zoning Map for the Town of Sullivan's Island is hereby subdivided into areas RC-1A, RC-1B, RC-1C, RC-1D and RC-1E. Subsection RC-1A shall be that area from the Thompson Memorial Bridge south to the intersection of the north lot line of the property owned by School District No. 2 located in the block of Station 20 on the front beach. The RC-1B area shall run from the north lot line of the aforesaid School District No. 2 property south to the intersection of the south lot line of School District No. 2 property on the front beach located in the block of Station 19. the RC-1C area shall run from the aforesaid south lot line of the School District No. 2 property in the block of Station 19 south to the intersection of Station 16 Street south and the front beach. Section RC-1D shall run from Station 16 Street south to Station 12 Street and the front beach. Section RC-1E shall run from Station 12 Street south to the intracoastal waterway.

Sec. 21-39.1B There shall be no construction of any type, no destruction or removal of vegetation by any means except trimming and pruning of shrubs and trees as provided in this ordinance, and no manmade changes to topography in and RC-1 area, except as is provided in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island.

Sec. 21-39.1C Any landowner living immediately adjacent to the RC-1A, RC-1C or RC-1E area shall upon application to the Zoning Administrator be issued a permit, subject to the other terms and conditions of this Ordinance, to prune and trim the shrubs and trees enumerated herein in an area from the applicant's lot line towards the ocean within the extension of the landowner's side lot lines projected towards the ocean.

Sec. 21-39.1D The trimming and pruning allowed herein shall only be permitted between November 1st and the following February 28th; provided, that in 1995 only, trimming and pruning shall be permitted through March 25, 1995.

Sec. 21-39.1E There shall be no trimming, cutting or pruning of any vegetation of any sort in the RC-1B and RC-1D areas. In the RC-1A, RC-1C or RC-1E areas, the only vegetation that may be trimmed and pruned is limited to the following: Southern Waxmyrtle (Myrica Cerifera), Eastern Baccharis (Baccharis Halimifolia), and Popcorn trees (Tallaowtree, Sapium Sebiferum. In the case of Popcorn-trees, cutting can extend

below 7 feet if recommended by the consultant hired under this ordinance and approved by the Tree Commission). This vegetation may be trimmed and pruned so as to have a maximum height of no less than seven feet (7') above the ground and shall be trimmed and pruned in accordance with the highest professional standards and in accordance with the guidelines promulgated by the Town of Sullivan's Island.

Sec. 21-39.1F All trimming and pruning shall be accomplished only by a commercial contractor licensed by the Town of Sullivan's Island specifically for such purpose. The application for the permit must be made by the landowner and the qualified contractor hired or retained by the landowner. To qualify, the contractor must demonstrate to the Town that he/she has the experience to perform the trimming and pruning in accordance with the highest professional standards, that he/she is capable of identifying the vegetation that may be trimmed and that he/she has read the Ordinance and is familiar with its conditions, regulations and penalties. Additionally, the contractor must file a certificate of insurance with the Town evidencing workers' compensation coverage, public liability coverage of at least $1,000.000 Dollars and a performance bond as set forth herein. Additionally, the principal of each contractor shall agree to be personally liable for compliance with the terms of this Ordinance. The Town shall make a list of qualified licensed commercial contractors available to those who apply for a permit pursuant to the terms of this ordinance. The Town shall engage a qualified consultant to monitor said work. The consultant must agree to visit each site during the trimming and pruning permitted hereunder to ensure that work is being done according to the highest professional standards and the requirements of this ordinance. The cost of the consultant's visits shall be included in the permit fee which shall be paid by each applicant for a permit upon its issuance.

Sec. 21-39.1G The trimming and pruning allowed and all work performed shall be accomplished without the use of any heavy machinery, vehicles or other such machinery being brought into the RC-1 area or onto the beach front. All cuttings must be removed from the RC-1 area by said commercial contractor upon the completion of said work and hauled off of the island to an appropriate recycling dump by said contractor or used on the island in such use as specifically approved by the Tree Commission.

Sec. 21-39.1H All work performed pursuant to this permit, and all methods of trimming and pruning shall be performed in accordance with the highest professional standards and shall be monitored by and subject to the approval of the Town of Sullivan's Island and its consultant. The Town and its consultant shall have the right to immediately stop any work being performed in a manner not allowed, permitted or approved by removing and revoking the permit posted pursuant to Paragraph 21-39.1K hereinafter. At the conclusion of the trimming and pruning permitted herein the consultant shall visit each site and issue a certificate to the Town and to the landowner certifying that the trimming and pruning has been performed in accordance with the terms and provisions of this Ordinance and highest professional standard. The cost of the consultant's site visits shall be included in the permit fee which shall be paid by each applicant for a permit upon its issuance.

Sec. 21-39.1I Each commercial contractor licensed by the Town of Sullivan's Island to perform the work allowed by this Ordinance shall prior to the issuance of a permit be required to sign an agreement to perform all work in a manner consistent with the

provisions and restrictions of the ordinance and guidelines set forth by the Town and the consultant. Before issuance of a permit, each commercial contractor shall be required to post a performance bond in the amount of $5,000 Dollars wherein he guarantees faithful performance of his duties and obligations hereunder in a manner consistent with this Ordinance and instruction by the Town's consultant. Any person not complying with the terms of this Ordinance shall immediately forfeit said bond and shall be subject to all other terms and provisions of this Ordinance relating to fines and penalties in addition to the forfeiting of said bond.

Sec. 21-39.1J Landowners living immediately adjacent to the RC-1 area may maintain existing paths through the RC-1 area to the beach, provided those paths are no wider than six and one-half (6.5') feet through the vegetation and follow the natural contours of the land and dunes. No fill may be brought in for said paths, nor any manmade or artificial (non-wood) material.

Sec. 21-39.1K A fee of Two Hundred Fifty and 00/100 ($250.00) Dollars shall be paid by the applicant to the Town of Sullivan's Island for the granting of a permit to perform the work allowed hereunder. Additionally, the applicant must pay the costs charged by the licensed contractor for the actual cutting done pursuant to the application. The permit shall be posted on the property facing the street in plain view of the street at all times that any work is undertaken pursuant to said permit. Said permit shall be valid for the time specified in the permit with only one permit per property allowed for each cutting season.

Sec. 21-39.1L The violation of the terms of this Ordinance shall constitute a criminal offense and shall be punishable by the Municipal Court of the Town of Sullivan's Island or other Court of competent jurisdiction. Each tree or shrub which is trimmed or pruned in violation hereof, or poisoned or destroyed in any manner, shall subject the person so violating this Ordinance to a fine of One Hundred and 00/100 ($100.00) Dollars and/or thirty (30) days in jail. Each other violation of this Ordinance shall subject the person so violating to a fine of One Hundred and 00/100 ($100.00) Dollars and/or thirty (30) days in jail. Penalties prescribed herein shall be in addition to the forfeiture of the bond specified above. In addition, the violator must pay for the replacement of vegetation in like species and volume as determined to be appropriate by the Town upon the professional recommendation of its consultant.

Sec. 21-39.1M If any violation of the provisions and restrictions of the ordinance and the guidelines for trimming and cutting occurs, wherein the perpetrator is not known, the Town shall undertake mitigation to replace the vegetation with like species and volume upon the recommendation of the consultant, from funds available from fines and fees generated pursuant to this ordinance as established below at Section 21-39.1N. Provided further, that if the perpetrator is known, then in addition to fines levied by the Town pursuant to this ordinance, the Town shall institute civil proceedings to require said perpetrator to pay the cost of mitigation and to collect such other damages as are allowed by law. Fines and fees generated shall be used by the town to replant vegetation in the specific area where any such loss occurred. It is the intent of this ordinance to replace any vegetation so damaged or destroyed with like kind and volume.

Sec. 21-39.1N The fees generated by the permit application and fines from any violations of this Ordinance, as well as forfeiture of any bonds for violations hereof shall be set aside by the Town in a dedicated fund and used to pay its consultant and for such matters as appropriate studies and surveys of the land, its vegetation, wildlife and natural processes, mapping and photographing, also information and education programs and materials, as well as mitigation described in Paragraph 21-39.1M.

Sec. 21-39.1O The Town may seek the assistance of the Sullivan's Island Tree Commission to support the activities of this ordinance as they pertain to the gathering, organizing and dissemination of information about the RC-1 area, and to the replacement of vegetation under mitigation. The Tree Commission is hereby given the following responsibilities in addition to those it already has:

a. to study and monitor the impact of the pruning and trimming allowed under Section 21-39 with regard to the flora and fauna located within the RC-1 area;

b. to study and monitor the impact of the pruning and trimming allowed under Section 21-39 as to the integrity of the RC-1 public land as it related to erosion control and beach renourishment, drainage, mosquito control, and the public welfare, safety, and health of the town; and

c to study and make recommendations to the Town as to the management of all RC-1 public land so as to preserve and maintain RC-1 public land in accordance with the public land in accordance with the public welfare, safety, and health of the Town and the covenants and restrictions set forth in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island.

The Committee in the discharge of its duties may seek the advise of the consultant retained by the Town as set forth in this Ordinance.

Sec. 21-39.1P The provisions of this Ordinance are applicable only to the RC-1 land area of the Town, and the Town of Sullivan's Island retains full authority over RC-1 land, subject to the conditions, restrictions, and covenants set forth in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island. The permits allowed in this Ordinance for the trimming and pruning of vegetation upon application of private landowners as set forth herein are not intended by the Town, and the provisions of this Ordinance shall not be construed as granting to any private landowner the unrestricted right to trim and prune vegetation in the RC-1 land. The trimming and pruning allowed in this Ordinance is granted as an accommodation to landowners living immediately adjacent to RC-1A, RC-1C or RC-1E areas, and the Town retains full authority to amend and/or revoke any portion of this Ordinance.

Sec. 21-39.1Q The permits allowed under this Ordinance do not obviate the need or requirement of any landowner obtaining a permit under this Ordinance from any other required permit or authorization from any governmental or regulatory body that may have jurisdiction over the RC-1 public land. Any landowner obtaining a permit shall agree to indemnify the Town for any action taken pursuant to said permit in derogation of any State, Federal or County law or regulation, including costs, fines and attorney's fees.

Sec. 21-39.1R Any part or parts of this Ordinance which shall be held to be unconstitutional shall not affect in any way the validity of the remaining parts of this Ordinance. (2-21-95)

Sec. 21-39.2 Erosion control structures.

No fill material, seawalls, jetties, bulkheads, revetments, groins, breakwaters, boardwalks, fences, or other erosion control structures shall be constructed, erected, or placed within the RC-1 Zoning District or the RC-2 Zoning District, except as provided in Section 21-54(F) and Section 21-54(G) of this Ordinance. There shall be no excavation of sand and/or disturbance of vegetation in the RC-1 Zoning District or the RC-2 Zoning District, without Town permission and permission of other agencies as appropriate. (7-15-86, 1-21-92)

Nothing in this section shall be construed to prevent the Town or other property owners from repairing groins, seawalls, bulkheads, revetments or other erosion control structures, provided permission for such repairs is obtained from the SCCC and the Town, where applicable. It shall be the responsibility of property owners, within 90 days following the effective date of this ordinance, to furnish the Town with plans or other information pertaining to erosion control structure location, elevation, construction materials, etc.

For the purpose of this chapter, repair of erosion control structures shall not be allowed when such structures are determined by the Town to be damaged fifty (50%) percent or more. The Town shall make the damage determination using procedures developed and adopted by SCCC.

Erosion control structures damaged less than fifty (50%) percent may be repaired in place, provided such repairs comply with all Town and SCCC repair regulations. In the event that Town and SCCC repair regulations are in conflict, the more restrictive shall apply.

Damaged erosion control structures must not be enlarged, strengthened beyond pre-damage condition or rebuilt during permitted repairs; repairs must be made with materials similar to those of the existing erosion control structure. However, in the event that an adjacent erosion control structure is destroyed and is not permitted to be repaired, a property owner shall be allowed to construct a wing wall, provided permission is obtained from the SCCC and Town.

The Town may require as a condition of erosion control structure repair that the property owner renourish the beach seaward of the erosion control structure on an annual basis with two (2) cubic yards of sand per foot of structure length as measured along the shoreline. This condition shall remain in effect as long as the erosion control structure remains in place and exposed, in whole or in part. Renourishment sand must come from an upland source and must be approved by the SCCC as beach-compatible. The timing and location of renourishment sand placement shall be governed by Town and SCCC regulations. (1-21-92)

Sec. 21-39.3 Regulatory and instructional signs.

Nothing in this section 21-39 shall be construed to prevent the Town of Sullivan's Island from erecting or having erected signs in the RC-1 area for regulatory or instructional purposes. (2-17-87)

Sec. 21-40 Area RC-2 restrictions.

In an RC-2 area there shall be no construction of any type, no destruction of vegetation, except trimming, cutting and pruning of back beach bushes and trees as provided in Section 21-39, non-manmade changes of topography and the construction of private docks by owners of lots adjoining this area may be permitted, provided approval of the U.S. Corps of Engineers, the Department of Health and Environmental Control/Office of Ocean and Coastal Resource Management (DHEC/OCRM) and any other governmental or regulatory agency with jurisdiction provided the dock meets the following restrictions and is permitted by the Town of Sullivan's Island:

a) No dock shall be permitted to be constructed where the length of the dock shall exceed three hundred (300') feet in total length;

b) No dock shall be permitted to be constructed which extends into the channel or extends so far as to interfere with navigation;

c) The head of the permanent dock/"pier head" structure shall be no greater in size than fifteen (15') feet by fifteen (15') feet. In addition to the permanent pier head of the dock there may be a floating dock no greater than eight (8') feet by twenty (20') feet. An attached structure may be placed on a dock or floating dock provided it is included in the above two hundred twenty-five (225 sq. ft.) square feet of the "head" or one hundred sixty (160 sq. ft.) square feet of the floating dock and provided it does not exceed three (3') feet in height and does not exceed thirty-two (32 sq. ft.) square feet in floor area;

d) The dock, pier, boat lift, the floating dock, walkway and any appendages thereto allowed under this ordinance shall be constructed within the projected property lines of the owner's lot and shall further adhere to the set-back requirements of the Town's zoning ordinances, more specifically be no closer than ten (10') feet from either projected property line;

e) The maximum width of the walkway or pier between the highland and the pier head shall be four (4') feet. The walkway may have a railing but shall have no walls which impede the flow of air through the walkway;

f) A single roof may be placed either over the dock or the boat lift and shall be limited to the area lying immediately above the pier head or the boat lift with no more than two (2') foot overhang over any portion of the pier head or boat lift; provided, however, in no event shall the overall size of the roof exceed three hundred sixty-one (361 sq. ft.) square feet. No roof shall extend above fifteen (15') feet of the mean high water

2005 ORD.

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN McQUEENEY
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

June 10, 2010

I certify the attached copy of the Ordinance to Amend Chapter 21 of the Zoning Ordinances for the Town of Sullivan's Island ratified May 17, 2005 is a true copy.

Ellen McQueeney, Town Clerk
Town of Sullivan's Island

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

ORDINANCE TO AMEND CHAPTER 21
OF THE
ZONING ORDINANCES FOR THE TOWN OF SULLIVAN'S ISLAND

WHEREAS, Chapter 21 of the Town of Sullivan's Island Ordinance which is cited as "The Zoning Ordinance" was originally enacted in 1977; and

WHEREAS, the Town of Sullivan's Island has, from time to time, amended certain sections of The Zoning Ordinance; and

WHEREAS, the Town of Sullivan's Island was mindful to make comprehensive revisions to The Zoning Ordinance and sought plans and procedures whereby professional zoning consultation, citizen input and Town staff would come together to make the comprehensive revisions needed to The Zoning Ordinance; and

WHEREAS, the Town of Sullivan's Island retained the services of Cooper Consulting, Inc. who are known as Planning and Zoning experts; and

WHEREAS, Cooper Consulting, Inc. held three (3) public workshops whereby citizen input was invited and accepted and after reviewing the existing Zoning Ordinances together with the citizens input at public meetings and further citizen and Town staff input by way of written and verbal communications, Cooper Consulting, Inc. produced a proposed draft of a comprehensive amendment to the Town of Sullivan's Island Zoning Ordinances; and

WHEREAS, upon receipt of the proposed draft, the Town Council directed the Planning Commission to hold public hearings and to make further review and recommendations; and

WHEREAS, the Planning Commission held numerous public hearings and after review it rendered its recommendations to the Town Council; and

WHEREAS, the Town Council for the Town of Sullivan's Island has reviewed the proposed draft by Cooper Consulting, Inc. and the proposed recommendations and revisions of the Planning Commission and now are mindful of adopting the following comprehensive revisions to the Town Zoning Ordinance and are of the opinion that the following comprehensive amendments are in the best interest of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL IN MEETING DULY ASSEMBLED,

that Chapter 21 The Ordinances for the Town of Sullivan's Island be amended to read as follows:

upland source and shall be approved by the OCRM as beach-compatible. The timing and location of renourishment sand placement shall be governed by Town and OCRM regulations.

Sec. 21-70. General provisions for RC-1 Area District.

A. The provisions of this Article are applicable to the RC-1 Area District land area of the Town. The Town of Sullivan's Island retains full authority over RC-1 Area District land, subject to the conditions, restrictions, and covenants set forth in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island. The permits allowed herein for the trimming and pruning of vegetation upon application of private landowners as set forth herein are not intended by the Town, and the provisions shall not be construed as granting to any private landowner, the unrestricted right to trim and prune vegetation in the RC-1 Area District. The trimming and pruning provided herein is granted as an accommodation to landowners living immediately adjacent to RC-1A, RC-1C or RC-1E areas, and the Town retains full authority to amend and/or revoke any portion of these provisions.

B. The permits allowed herein do not obviate the need or requirement of any landowner obtaining a permit under this Article from any other required permit or authorization from any governmental or regulatory body that may have jurisdiction over the RC-1 Area District. Any landowner obtaining a permit shall agree to indemnify the Town for any action taken pursuant to said permit in derogation of any County, State, or Federal law or regulation, including costs, fines and attorney's fees.

C. Nothing in this Article shall be construed to prevent the Town of Sullivan's Island from erecting or having erected signs in the RC-1 Area District for regulatory or instructional purposes.

Sec. 21-71. Trimming and pruning in the RC-1 District.

A. **No construction or removal of vegetation.**

There shall be no construction of any type, no destruction or removal of vegetation by any means except trimming and pruning of shrubs and trees as provided in this Ordinance, and no manmade changes to topography in an RC-1 Area District, except as provided herein and in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island.

B. **Retaining of a town vegetation consultant.**

The Town shall engage a qualified consultant to monitor trimming and pruning of shrubs and trees in the RC-1 Area District. The consultant shall agree to visit each site during the trimming and pruning permitted hereunder to ensure that work is being done according to the highest professional standards and the requirements of this Ordinance. The cost of the consultant's visits shall be included in the permit fee that shall be paid by each applicant.

C. **Permit for trimming and pruning of vegetation.**

(1) Any landowner living immediately adjacent to the RC-1A, RC-1C or RC-1E Area shall upon application to the Zoning Administrator be issued a permit, subject to the other terms and conditions of this Ordinance, to trim and prune the shrubs and trees enumerated herein in an area from the applicant's lot line towards the ocean within the extension of the landowner's side lot lines projected towards the ocean.

(2) The trimming and pruning allowed herein shall only be permitted between November 1st and the following February 28th.

(3) The only vegetation that may be trimmed and pruned in the RC-1A, RC-1C or RC-1E Areas is limited to the following: Southern Waxmyrtle (Myrica Cerifera), Eastern Baccharis (Baccharis Halimifolia), and Popcorn trees (Tallowtree, Sapium Sebiferum). This vegetation may be trimmed and pruned so as to have a maximum height of no less than five (5) feet above the ground and shall be trimmed and pruned in accordance with the highest professional standards and in accordance with the guidelines promulgated by the Town of Sullivan's Island. In the case of Popcorn trees, cutting can extend below five (5) feet if recommended by the consultant hired under this Ordinance and approved by the Tree Commission.

(4) The trimming and pruning allowed and all work performed shall be accomplished without the use of any heavy machinery, vehicles or other such machinery being brought into the RC-1 Area District or onto the beach front.

(5) There shall be no trimming, cutting or pruning of any vegetation of any sort in the RC-1B and RC-1D Areas.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2005-CP-10-1014
DAVID and SONJA BLOOM	)	
Petitioners,	)	**ORDER AND JUDGMENT**
vs.	)	
TOWN OF SULLIVAN'S ISLAND BOARD OF ZONING APPEALS	)	
Respondent.	)	

FILED
2005 OCT -7 AM 9:25
CLERK OF COURT

I. INTRODUCTION

This matter comes before me by way of a petition for judicial review filed by the Petitioners, (hereinafter, "the Blooms"), following the denial by the Respondents, Sullivan's Island Board of Zoning Appeals (hereinafter "the BZA"), of the Blooms' application for a variance allowing them to trim and/or remove and replace trees growing on the Town's land adjacent to their property on Sullivan's Island.

The Court conducted a hearing on the Petitioners' petition for judicial review on September 19, 2005. After consideration of the arguments, the Court enters the following order upholding the decision of the BZA.

II. FACTS

The Town of Sullivan's Island (the "Town") owns land seaward of the boundaries of beachfront lots to the low water mark of the Atlantic Ocean. This public land is composed in part of vegetation, sand dunes, and beach. In order to preserve the area, the Town Council of Sullivan's Island, by duly adopted ordinances, designated this land a recreational and conservational area, and placed restrictions on the removal and trimming or pruning of the vegetation. Sullivan's Island Zoning Code Sec. 21-37, 21-38,

21-39 1A-1R (recently re-codifed as Sec. 21-67 through 21-73). Under these ordinances, "the only vegetation that may be trimmed or pruned is limited to the following: Southern Waxmyrtle (Myrica Cerifera), Eastern Baccharis (Baccharis Halimifolia), and Popcorn trees (Tallaowtree, Sapium Sebiferum)." (Sec. 21-39.1E, Sec. 21-71A). Adjoining owners who desire to trim or prune these three varieties of vegetation on this public land must file an application, pay a fee, and conduct the trimming in accordance with strict guidelines specified in the ordinances.

The controlling ordinances do not allow the trimming and pruning of any other vegetation in the recreation and conservation districts, except for the maintenance of existing paths to the beach.

The Blooms own a front beach property at 1655 Atlantic Avenue. The oceanside boundary of their property is adjacent to land owned by the Town of Sullivan's Island that is within the RC-1C area of the recreation and conservation districts of the Town.

The Blooms applied for a variance from the ordinances to be allowed to trim trees for the purpose of providing a view of the ocean from the third floor of their house. As shown from the record none of the trees the Blooms seek to trim is one of the three varieties subject to trimming under the ordinances.

The zoning official denied the Blooms' request. On December 20, 2004, the Blooms filed an appeal and application for a variance with the Town's BZA seeking to "remove red maples, red cedars, pecan, hackberry, and other trees higher than 28 feet and/or trim back to 25 feet in height."

The Town's ordinances governing variances track those found in S.C. Code § 6-29-800 (A) (2). Upon a determination that all the conditions for a variance have been

met, the BZA may grant the property owner a variance with any restrictions it deems necessary. Sec. 21-62.

An individual variance will be granted due to "unnecessary hardship" upon a finding by the BZA that:

> (a) there are extraordinary and exceptional conditions pertaining to the particular piece of Property;
> (b) these conditions do not generally apply to other property in the vicinity;
> (c) because of these conditions, the application of the ordinance to the particular piece property would effectively prohibit or unreasonably restrict the utilization of the property; and
> (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Sec. 21-62.

In their effort to satisfy all four requirements for a variance, the Blooms' application for variance alleges that (a) their property is subject to extraordinary and exceptional conditions in that "the upper floor level of the home is approximately 37 ½' above MSL – one of the highest [Sullivan's Island] elevations"; (b) the conditions did not generally apply to other property in the vicinity because "adjacent and vicinity homes are two levels. Spicer home to left and Lyles on right are respectively 27' and 25' MSL at their upper floor levels"; (c) the application of the ordinance to their property would prohibit or unreasonably restrict the utilization of the property in that "if these trees continue to grow[,] the view corridor from the third level will be lost"; and (d) the authorization of the variance would not be of substantial detriment to the adjacent property owners or to the public good and the character of the district would not be

harmed by the granting of the variance because "the adjacent property cannot obtain a view by trimming or cutting these select trees."

On January 13, 2005, the BZA conducted a hearing and heard arguments from the Blooms and from Freeman Milligan, a landscape architect hired by the Blooms. The Blooms did not challenge the constitutionality of the ordinances in their variance application or at the BZA hearing.

The BZA denied the application and issued a written order on February 10, 2005. It determined that the conditions were not extraordinary and exceptional in that there are numerous other beachfront properties that do not have a view of the ocean because of the trees that have grown in the area, and that these conditions generally apply to other property owners in the vicinity. The BZA found that the fact the Blooms' house was taller than others did not constitute an exceptional circumstance, and that the loss of view did not effectively prohibit or restrict the utilization of the property. The BZA also determined that the granting of the variance would harm the public purpose by setting a precedent for the other people to press their variance cases. Finally, the BZA found that this was a legislative matter for Town Council because it affected virtually all the property owners in the vicinity, and encouraged the Blooms to go to Town Council with the matter.

The Blooms then filed this petition for judicial review, alleging that the BZA's decision was arbitrary and unsupported by the evidence, that the decision was based on errors of law, and that the ordinance is unconstitutional.

III. CONCLUSIONS OF LAW

A. Standard of Review

A zoning board's findings of fact are final and conclusive on appeal and should be treated in the same manner as a finding of fact by a jury and the court may not take additional evidence. *Clear Channel Outdoor v. City of Myrtle Beach* 360 S.C. 459, 464, 602 S.E.2d 76, 78 (S.C.App.,2004); S.C.Code Ann. § 6-29-840(A). An appeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law. *Id.* This standard is set forth in S.C.Code Ann. § 6-29-840(A): "...the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence....*In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.*" (Emphasis added).

Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances. *Purdy v. Moise,* 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953) "The circuit court should not disturb the findings of the board unless the board has acted arbitrarily or in an obvious abuse of discretion, or unless the board has acted illegally or in excess of its lawfully delegated authority." *Fontaine v. Peitz,* 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). As a consequence, a court must "refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Peterson Outdoor Adver. v. City of Myrtle Beach,* 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997). To this end, a court

will uphold the decisions of a reviewing body if there is any evidence in the record to support its decision. *See Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 505-06, 443 S.E.2d 401, 405 (Ct.App.1994).

B. The BZA's Decision Is Not Erroneous as a Matter of Law

The Blooms have failed to establish that they satisfied every one of the criteria for a variance as a matter of law nor have they shown the BZA's decision was erroneous as a matter of law.

An individual variance will be granted due to "unnecessary hardship" upon a findings by the BZA that:

> (a) there are extraordinary and exceptional conditions pertaining to the particular piece of Property;
> (b) these conditions do not generally apply to other property in the vicinity;
> (c) because of these conditions, the application of the ordinance to the particular piece property would effectively prohibit or unreasonably restrict the utilization of the property; and
> (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Sec. 21-62.

Granting a variance from terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. *Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (S.C. 1999), certiorari denied 528 U.S. 1020.

Under Sullivan's Island Ordinance Sec. 21-62 and S.C. Code Ann. § 6-29-800, in order to receive a variance, the Blooms were required to demonstrate unique, extraordinary, and exceptional circumstances. They further had to demonstrate that

because of these circumstances, application of the ordinance would effectively prohibit or unreasonably restrict the use of their property. In addition, the Blooms had to establish that their property met all four criteria and that there was no evidence to support any of the BZA's findings they did not meet the requirements. *Row Associates v. Horry County, supra.*

The BZA's finding that the Blooms' loss of view does not constitute an extraordinary, exceptional and unique condition that would prohibit or unreasonably restrict the use of the Bloom's property is not arbitrary, unsupported by the evidence or based on an error of law.

Contrary to the Blooms' argument, under South Carolina law, a property owner has no right to an unobstructed ocean view or breeze. *Schroeder v. O'Neill*, 179 S.C. 310, 184 S.E.2d 670 *citing Bailey v. Gray*, 53 S.C. 503, 31 S.E. 354 (1898). Easements of view are not recognized in this State. *Id.* Thus the decision of the BZA does not abridge any rights of the Blooms. Because the Blooms have no right to a view, the decision of the BZA does not "unreasonably restrict the utilization of the property" as a matter of law.

Additionally, the findings of the BZA are supported by the record. The record demonstrates the Blooms situation is not unusual or peculiar in that other beach front property owners have their views of the ocean obstructed due to tree growth. Further, other than their claim of loss of view, the Blooms presented no evidence that application of the ordinance will prohibit or unreasonably restrict the use of their property, as already stated. Moreover, the record demonstrates that the character of the district would be harmed if the variance is granted because there will be precedent allowing

individuals to trim and remove vegetation without a showing of hardship, but rather for the sole purpose of obtaining a view.

The Court would also note that it questions whether the Blooms are properly applying the test for a variance. The condition that allegedly creates the hardship in this case is the vegetation on the adjoining parcel. The Blooms have not shown that anything peculiar to their property creates the alleged hardship. The statutes and ordinances governing variances applicable to this case contemplate that the condition creating the alleged hardship be a feature of the applicant's property, not the applicant's neighbor's property.

The Blooms argue before this Court that other owners have been granted the right to trim vegetation and that therefore the BZA's decision in this case is arbitrary and capricious. The record does not support this contention. There is evidence in the record that the trimming allowed by the Town has involved wax myrtles, one of the three species excepted from the ordinances' prohibition on trimming. The Blooms failed to put forward proof before the BZA of other alleged instances of disparate treatment, and failed to establish any factual basis for their contention of substantial similarity.

As to the Bloom's challenge to the constitutionality of the ordinance, this issue was not raised before or ruled on by the BZA at the hearing or through any post-hearing motion. As such, it is not preserved for appeal. *Burton v. County of Abbeville*, 312 S.C. 359, 440 S.E.2d 396 (Ct. App. 1994); *Kiawah Resort Associates v. South Carolina Tax Com'n*, 318 S.C. 502, 458 S.E.2d 542 (1995). Moreover, the Blooms failed to challenge the legality or constitutionality of the ordinance within 60 days of its adoption; as such any challenge is barred by law. S.C. Code Ann. 6-29-760(C). Further, as already

discussed South Carolina does not recognize the right to unobstructed ocean views and breezes. *Schroeder, supra.* Therefore, there is no basis for an "illegal taking" of property as alleged by the Blooms.

The BZA's denial of the variance was not arbitrary, clearly erroneous, or based on an error of law. I have considered all grounds alleged and asserted for reversal of the BZA's determination, even if not specifically discussed herein, and find them to be without merit. Therefore, Blooms' Petition for Judicial Review is dismissed with prejudice.

I further deny the motion for mediation by the Blooms since the request for mediation was not made within 30 days of the mailing of the BZA's decision as required by S.C. Code § 6-29-820.

For the foregoing reasons, the Petitioners' Motion for Mediation is denied and the Petitioners' Petition for Judicial Review is denied in its entirety with prejudice, and judgment shall be entered in favor of the Respondent, Town of Sullivan's Island Board of Zoning Appeals, affirming its final decision in this matter.

AND IT IS SO ORDERED.

September 5, 2005

Mikell R. Scarborough
Master in Equity, Charleston County
Special Circuit Judge

State of South Carolina) In the Court of Common Pleas
)
County of Charleston) C/A No: 10-CP-10-5449

Nathan Bluestein,)
Ettaleah Bluestein,)
Theodore Albenesius)
and Karen Albenesius,)
)
Plaintiff(s),)
)
versus)
)
Town of Sullivan's)
Island and Sullivan's)
Island Town Council,)
)
Defendant(s).)
)

CONDENSED COPY

Deposition

of

Theodore Albenesius

Deposition of Theodore Albenesius, taken before Michelle Dawson Lloyd, Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 1:00 p.m. and commencing at the hour of 1:10 p.m., Tuesday, January 18, 2011,

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at the office of North Charleston City Hall, South Carolina.

Reported by:
Michelle Dawson Lloyd

APPEARANCES

For the Plaintiff(s):
For Nathan Bluestein:
Robert H. Hood, Esquire
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401

For Theodore Albenesius:
A. Walker Barnes, Esquire
Hood Law Firm

For the Defendant(s):
For Town of Sullivan's Island:
J. Brady Hair, Esquire
2500 City Hall Lane
N. Charleston, SC 29406
For Sullivan's Island Town Council:
Derk Van Raalte, Esquire

2500 City Hall Lane
N. Charleston, SC 29406

Also Present:
Nathan Bluestein
Francie D. Austin, Esquire

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EXHIBITS

Exhibit No. 1: Exhibit Book

STIPULATIONS

This deposition is being taken pursuant to South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Theodore Albenesius, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:
Court Reporter: State your full name for the record, please.
Witness: Theodore Henry Albenesius, III.

DIRECT EXAMINATION

BY MR. DERK VAN RAALTE:

Q All right. Mr. Albenesius, my name is Derk Van Raalte and, along with Brady, I'm one of the lawyers for the Town of Summerville [sic], the defendant's in this case. You can call me Derk for the deposition. It's a heck of a lot easier. Just as you had a chance to hear before during Mr. Bluestein's deposition, this is a chance for the Town to ask some questions and get a better understanding of what this lawsuit is about from your perspective, and to learn a bit more about the case. The ground rules are really pretty straight forward. The same as you heard last time. Have you ever testified in a case before?
A Yes.
Q Okay. Tell me about what cases you've testified in.
A Just one.

Q All right. What type of case was it?
A It was a - Well, let's see, I think he was suing me. It's been so long I can't remember.
Q Was it a personal dispute, a business dispute?
A A business dispute.
Q Okay. Have you ever had your deposition taken previously?
A Yes.
Q Okay. So you know a little bit about this process?
A A little.
Q All right. You understand that I'm going to ask you questions today, correct?
A Correct.
Q Okay. And the court reporter's going to take down everything that you say.
A Right.
Q All right. One of the few real ground rules is that if you have questions you need to ask me to clarify whatever you might not understand in the way that I have phrased something.
A Okay.
Q You can't consult with your own lawyer now that the deposition has started. If you go ahead and answer a question the way that I phrased it I'm going to assume that you understood the question as posed. Is that fair enough?

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A Okay.
Q And the other real ground rules, that you're required, of course, to answer completely and truthfully when I ask you questions today.
A Uh-huh.
Q Do you understand that?
A Yes.
Q Okay. And you understand that you're under oath?
A Yes.
Q Can you tell me a little bit about educational history?
A I have a high school education. I also have a B.S. degree from Baptist College.
Q And when did you graduate?
A '71.
Q What did you do for a living when you graduated, what's your work history?
A Went to work for Cel Oil Products Corporation as it's treasurer.
Q Is that a family business or a -
A Family.
Q Okay.
A Was family.
Q Are you still associated with Cel Oil?
A I am.
Q All right. In what capacity are you associated?

A President.
Q How long have you served as the president?
A About twenty years.
Q All right. In that time you've had a number of business dealings and other types of sophisticated things that you've been involved with I assume?
A I guess so.
Q So, it's fair to say that you've got no trouble understanding written English, spoken English, you're conversant, right?
A Right. As long as the print's not to small.
Q I understand. Where do you currently live?
A 2411 Atlantic Avenue, Sullivan's Island.
Q When did you buy that house?
A About a year and a half ago.
Q Does July of 2009 sound about right?
A That's it, that's exactly.
Q Is that your first house on Sullivan's Island?
A No, that's my second.
Q All right. What other houses have you lived at on Sullivan's Island over the years?
A Well, I had one as a rental unit. 2256 Atlantic.
Q Is that front beach as well?
A That's second row.
Q And when did you buy that house?

A 1994. I think that's correct. No, 2004.
Q Okay. Did you ever occupy that house yourself?
A Just on a weekly basis.
Q Just to make sure I understand: When you first bought it you used it, but now you've kept it as a rental property. Is that -
A When I first bought it I had it as a rental property, and it still is a rental.
Q Okay. So you've never considered that 2256 to be a residence of yours personally?
A No.
Q What is it that the Town did wrong that caused you to sue it in this lawsuit?
A Just loss of views and breezes.
Q Okay. What do you hope that this lawsuit's going to accomplish?
A I hope that we can get back our views and breezes.
Q Now, when you say that you're upset at the Town because of the loss of your views and breezes. Has the Town gone out and built a wall that's blocked your view?
A No. They just won't control the trees and the vegetation.
Q So the trees and vegetation have grown up over time and it's that vegetation growth that's blocking your view. Is that correct?
A Correct.

Q Okay. Are you aware that the Town, currently, has zoning ordinances on the books that allow for certain vegetation trimming in the accreted land?
A I am.
Q Okay. And what's the problem, from your perspective, with that?
A They just want you to cut it too high, five feet or five and a half. And that's just too high. You can't see over that in order to get a view of the ocean. As well as, it becomes a breeding ground for snakes, and racoons, and mosquitoes, and other things like that.
Q Now, you mentioned that at five feet you can't see over it. Do you have any idea what the first floor elevation on your house is?
A I would imagine that it would be ten or twelve feet.
Q That's above ground or above sea level?
A That would be above ground, I guess.
Q Okay. If the Town were going to set a cutting height that was sufficiently low, that you could see over it, what height do you think that would need to be?
A Three feet for trees and vegetation.
Q Now, you sound pretty sure about that three feet. Have you gone out with a yard stick and, you know, kind of stuck it there and looked at it?
A I've kind of walked the land.

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Q Okay. So, the basis for your three feet is sort of your actual observation, and that's how you settled at three feet as the height it needs to be for you?
A Well, that was also what it was in 1981.
Q Now, in 1981 are you familiar with what different species of trees could be cut, or vegetation could be cut?
A No. I don't have a clue.
Q Are you aware that over time the Town's cutting rules have changed?
A I don't know.
Q Well, you just told me that you thought in 1981 it was three feet, correct?
A I thought it was three in 1981.
Q Okay. And you told me that right now it's five and that's too high. You can't see over it, right?
A Right. And you've got trees out there now too.
Q But, I guess, my point is pretty simple, I mean, five feet and three feet are two different numbers, right?
A That's correct.
Q Okay. So, it's changed? It's not the same as it use to be, is it?
A Say that again.
Q Okay. It's no problem. You were telling me that in 1981, your understanding was, that the rule was three foot height.

A That's what I understood. Three foot for trees and for vegetation.
Q Right. And that you understand that now the rule is five feet. And that, that's not good enough for you?
A No, that's not.
Q Okay. And I'm asking, you know, there's been a change since 1981 to today as far as the rules, right?
A Yes. There's been a change in the rules, yes.
Q Let me talk to you for a little bit about the current version, which is the 2005 version of the ordinance. Let me direct your attention, you're welcome to use Mr. Bluestein's book, or I've got one with your name on it as well, whichever one you'd prefer.
A Is the print the same?
Q Yeah, they're the same.
MR. VAN RAALTE: Turn to, if you turn to Tab 1-A, right here at the very front, for me.
MR. ALBENESIUS: What page is that?
MR. VAN RAALTE: Right here. There's a Tab 1-A right there, the very front page. There you go.
MR. ALBENESIUS: Okay.
Q Now, if I could get you to take a look at the caption, right here at the very top, where's it underlined in bold

face. Could you read that for me?
A Whereas, Chapter 21 of the Town of Sullivan's Island Ordinance which is cited as a Zoning Ordinance was originally enacted in 1977 (as read).
Q All right. So, Chapter 21 is the Zoning Ordinance of the Town, correct?
A I don't know.
Q Okay. Well, did you just read that?
A I just read it.
Q Okay. Well, how about read up above it, where it's in bold face, all caps. You see that?
A Yeah.
Q Right at the very top of the page.
A Right.
Q Okay. Read the all caps, bold face, underline for me please.
A Zoning Ordinances for the Town of Sullivan's Island.
Q Okay. So are you satisfied that we're talking about the zoning ordinances for the Town of Sullivan's Island?
A Uh-huh.
Q Okay. Good.
MR. VAN RALLTE: Let me turn your attention now to Tab 1-C. And the zoning ordinances are, you know, they're huge. But I went ahead and put this Tab

1-C to help you find the proper page quickly. All right, go one tab maybe, right there. You see where it says Section - right there. You see where it says Section 21-71?
MR. ALBENESIUS: Uh-huh.
Q Okay. So that's Chapter 21, Section 71, right?
A Right.
Q All right. And could you read that heading for me, right after -
A Trimming and pruning to the RC-1 District.
Q All right. And in Section C-3, down below that. If you could read the Subsection 3 for me.
A The only vegetation that may be trimmed and pruned in the RC-1A, RC-1C, and RC-1E Areas is limited to the following: Southern Waxmyrtle, Eastern Baccharis, I'm not sure of some of these words, and Popcorn trees (as read).
Q No need to try the Latin. And if you drop down to the next sentence. Would you agree that, that's where it talks about the five foot cutting height?
A Right.
Q All right. Is this the ordinance that you've sued to invalidate?
A Did I do what?
Q Well, your lawsuit seeks to have the current rules for

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cutting on the accreted land cast aside, right?
A Right.
Q Okay. Is this the rule that you don't like?
A I don't like five feet on trees and vegetation.
Q Okay. And am I correct that earlier you also said that you didn't like the limits on what species you could cut. You were telling us that some trees are growing up higher and you could only trim others?
A Right.
Q Okay. So you'd agree that you don't like the species list or the five foot height, right?
A Right.
Q Okay. And, I trust that you would agree with me, that both of those things, the species limit and the height, they're dealing with the trimming of vegetation out there on the accreted land, correct?
A Say that again.
Q The species limits and the height limits, those both deal with the trimming of vegetation on the accreted land, right?
A And the trees.
Q Okay. The trees and the - But it's vegetation, trees, it's trimming of that plant material.
A Say that again. I'm not with you on that.
Q There's a five foot rule height limit in this ordinance.

Correct?
A Correct.
Q Okay. And you'd agree with me that, that deals with the trimming of vegetation, plant material, trees, that kind of stuff, right?
A Yes. I want to see three feet on those objects you named.
Q Okay. I understand. And where it says the only vegetation that may be trimmed and pruned in these areas is limited to, Southern Waxmayrtles, Eastern Baccharis, and Popcorn trees. That's dealing with what types of vegetation and plant growth, trees, et cetera, that you can cut, right?
A Right.
Q Okay. If the Town set a new rule in place that said that there would be no cutting, whatsoever, on the accreted land by anyone, would you agree that over time those plants would grow up and totally obscure the view?
A Yes.
Q Okay. And that'd be just nature taking it's course, right?
A It'd be nature taking it's course?
Q Well, I mean, what I've just said, is if the rule is no cut -
A If there was no cutting. But there is cutting right now.

Q I'm asking you to imagine a world where, if the Town tomorrow, passed a, there will be no cutting ordinance, and they -
A There's going to be a lot of people whose going to lose a lot of money.
Q Maybe so. But, I guess, --
A And then there's going to be a lot of lawsuits then.
Q I guess my question is this, that one change, about putting a no cutting whatsoever rule, would cause - would allow the plants to grow up and block the view. The Town wouldn't have to go build a wall to block a view, the Town wouldn't have to plant trees, the Town wouldn't have to fertilize. All they'd have to do is say, you know, no cutting and nature, by itself, would cause the plants to grow, right?
A Right.
Q Based on that, wouldn't you agree that your view is better if the ordinances allow some vegetation and plant to be cut than it would be without any cutting at all?
A Yeah. But I want three feet.
Q Well, I understand. I'm not talking about what the height is. But I'm saying, if you had to choose between cutting or, you know, no cutting at all or allowing cutting, which is better for your view?
A Well, cutting would be better.

Q Okay. And what's the reason for the Town to have a cutting ordinance?
A I don't know because it's not a good one.
Q When you say it's not a good one, do you think that the Town needs a less restrictive cutting ordinance to better protect your view?
A Yes.
Q And you keep talking about the three feet. Am I correct that you like the 1981 version of the ordinance, with the three feet, better than you like any other of the later rules?
A As long as the '81 had three feet, I'm not positive on that.
Q Okay. Well, tell you what, we can satisfy you on that.
MR. VAN RAALTE: If you wanna turn to Tab 2-B in your book.
MR. ALBENESIUS: 2-B?
MR. VAN RAALTE: 2-B, yes, sir. I think you went one too far. There you go, go back one more page.
MR. VAN RAALTE: All right. Take a look down, at the bottom where it says Section 21-39. Do you see that?
MR. ALBENESIUS: Okay.
MR. VAN RAALTE: And then flip the page

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to 194, which is the next page. Now, in subsection 5 there's some highlighting. Do you see that?

MR. ABENESIUS: I do.

Q Okay. And what height is specified there?
A Three feet.
Q Okay. So, if you look up at the top of the page, we're dealing with the zoning ordinance again, right? You can see it at the very top of the page, it's underlined.
A Okay.
Q Just to make sure we're all on the same page, I mean, we're back to the - We're talking about what the '81 ordinance allowed.
A Right.
Q And you'd agree with me that the 1981 Zoning Ordinance dealt with a three foot height rule, right?
A Right.
Q And that's the one that you favor, correct?
A Correct.
Q And the reason that you like that 1981 three foot rule better than the current one is that it let's you cut more, correct?
A Correct.

MR. VAN RAALTE: I'll direct you now to Tab 3-C. I think you're at the wrong

tab maybe.

MR. ALBENESIUS: 3-C right?

MR. VAN RAALTE: Yes. It should look just like this. There you go.

MR. ALBENESIUS: Okay.

Q All right. Now, this is the 1995 version of the ordinance, and I want to, basically, compare that to what we were just talking about in the 1981 version. Down at the bottom, take a second and read for me 21-39 1E. It's been highlighted for you.
A The only vegetation that may be trimmed and pruned is limited to the following: Southern Waxmyrtle -- Am I right?
Q Yes, sir. You're going right.
A Eastern Baccharis, and Popcorn trees.
Q All right. And flip it over to the next page for me. Would you agree that the height limit in this '95 version is seven feet?
A It is. But I wouldn't want it at seven.
Q Okay. Would you agree then that this 1995 version let's you cut less vegetation than the '81 version that you like?
A Yes.
Q And in that sense, the '95 version is more restrictive that the '81, right?

A Yes.
Q Now, we talked a minute ago about the 2005 version of the ordinance that set it at five feet. Do you remember that?
A Vaguely.

MR. VAN RAALTE: Well, let me to get you to look at Tab 1-C for me. I'm going to go ahead and refresh your memory. It's going to look just like that.

MR. ALBENESIUS: Okay. I'm ready.

Q All right. And again, am I correct that we see that same species list we just talked about, the Waxmyrtle, the Baccharis, and the Popcorn trees?
A Right.
Q And it says five feet here in this 2005 version, doesn't it?
A Yes it does.
Q Okay. Now, the five foot rule in this ordinance right here, the '05, it allows more cutting than did the seven foot rule, doesn't it?
A Yes.
Q But it's not as good for you as the three foot rule back in '81, is it?
A That's correct.
Q Okay. So this 2005 version is more restrictive than the 1981 version that you favor, isn't it?

A Yes.
Q Okay. And it's more restrictive in two ways, isn't it? One of them is the height limit, right? We're talking about three feet versus five feet, correct?
A Uh-huh.
Q And, am I correct that the other difference is in what species can be cut?
A What was that?
Q Is the other difference between the '81 version of the ordinance, that you like, in this current version, in '05, that there's a limit on what species of plants you can cut?
A In what, the '81 you mean?
Q Well, the 2005 version says that the only thing that may be trimmed or pruned in these areas is -
A '81 is better.
Q Okay. Because it doesn't have the species limits, right?
A Right.
Q Okay. So, again, it's less restrictive, it puts fewer restrictions on your cutting?
A That's correct.
Q If the Town kept the height limit at five feet, but passed a new ordinance that allowed you to cut all the different species, so you can just flat top the accreted land, Would that satisfy your concern?

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A Flat?
Q Yeah. You didn't have to pick and choose, you could cut some trees, but had to leave others. You could go out there and give it a haircut to look like carpet, five feet tall when you're done. Would that be enough to solve the problem?
A Did you say five feet tall?
Q Yes, sir. Five.
A No. I want the three.
Q If the Town went out, and set it at three feet, and you could flat top it, would that satisfy your problems?
A On vegetation and on trees?
Q Across the board, everything.
A Yes. That would be fine.
Q Okay. If the Town set the height limit at three feet but kept the species restriction, so you could only -- You could trim to three feet but the only thing you could trim would be Waxmyrtle, Eastern Baccharis, and the Popcorn trees.
A That's not much more than what we have now.
Q Okay. Would that be enough to satisfy your concerns?
A No. It wouldn't.
Q If you could only accomplish one of those two things - If you could go to Town Council and convince them to do what you wanted, but you could only get one, you could have the

height changed down to three feet, or you could have it so you cut all the species but the height limit remained at five. Which one would you rather have?
A Three and everything goes down. The trees and the vegetation.
Q Well, if you had to choose, that's both options. If both weren't an option, and you had to pick one or the other, you could either cut everything and make it flat, so you didn't have to pick and choose, or you could cut, you know, you had to pick and choose, but you could lower the height down.
A I wouldn't go for that option.
Q So, none, got to have both?
A Got to have both.
Q Okay.

MR. VAN RAALTE: Let me turn your attention to Tab 2-B. Up at the top part of the page there's some of the zoning ordinance up there. I'd like for you to take a moment and read that paragraph. Let me know when you're done.

A The boundaries - You want me to read it out loud?
Q No. You can just read it to yourself.
A Okay.

Q It starts with, of Sullivan's Island and that they. I think you may be on the wrong page. Maybe not.
A 21-39?
Q Start to read right there. Starts with, of Sullivan's Island and that they provide town citizens.
A Right.
Q Go ahead and just read that paragraph for me.
A Of Sullivan's Island and that they provide town citizens as well as visitors, with countless hours of pleasurable activity and rest and relaxation, which the boundaries of these areas are constantly shifting over unpredictable periods of time, in which they are composed of sand dunes and vegetation that ceaselessly change, and that these areas are prone to flooding (as read). You want me to keep on.
Q You can just read it to yourself for the moment.
A (Witness complies). Okay. I read that paragraph.
Q All right. Now, that paragraph contains various fact findings, doesn't it?
A Uh-huh.
Q Okay. That's yes?
A Yes.
Q I'm sorry, for the court reporter and the transcript. And among these, you know, right at the end - Could you read that last highlighted section for me, starts at the -

A Further the Town Council finds that this area is of a particular beauty in its natural state so as to provide aesthetic value necessary to the public health, safety, and welfare of the island residents and visitors, and in keeping with the historic uses of Sullivan's Island (as read).
Q So, would you agree with me that even back in 1981, Town Council understood that this accreted land area had aesthetic value to the residents?
A I'm not sure.
Q Okay. Well, do you know what it says?
A I've read it.
Q Okay. Did they find it to be of particular beauty?
A I don't know who wrote this thing.
Q These are the Town ordinances, and I guess, you know, as - Do you have any reason to think that the 1981 Town Council would lie when they passed the ordinances?
A I don't know what they might do. I know I'm just looking for three foot and three foot. You know, on trees and the vegetation.
Q Okay. Do you know who was on Town Council in 1981?
A No, of course not.
Q Okay. How about in 1995?
A I think the Mayor was Marshall Stith.
Q But do you know all of the Town Council members in 1995?

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A No, I don't.
Q Okay. Are you aware of any information or any evidence that would make you think that they would lie in the course of performing their duties?
A I think they may be mistaken.
Q Okay. But you don't know of anything that would make them liars?
A No. I don't know any of them to be a liar. But I didn't go to every Town Council meeting either.
Q But when they say, that they find that the area is of particular beauty, I mean, you think that, is there any reason to think that they're not being honest about that finding?
A I think they're mistaken.
Q Okay. So you don't think it's of particular beauty?
A No, I do not.
Q Okay. Tell me what you think about it.
A What I think of the --
Q The accreted land.
A The accreted land. I think that the trees are overgrown. I think that we are losing our views slowly. Within two more years I'm going to have a complete blank view. You've got all kind of animals in there. They even, supposedly, have a coyote in there too, in that ninety acres. You got rats, you got racoons. I've caught

racoons on top of my house. Had to have them hauled out and sent to John's Island. That's where they send racoons, see. And snakes, poison ivy, banana spiders, which will sting the fool out of you.
Q All right. Well, let me ask you this, now, you don't contend that Town employees came out and released snakes in the accreted land behind your house, do you?
A I don't think so.
Q Okay. Same with the rats, and the racoons, and the poison ivy, and the spiders?
A That comes with the overgrown stuff.
Q Okay. But nobody came out and put them there?
A No. I don't think so.
Q And, so, when this Town Council finds that there's particular beauty in the natural state, you don't think that natural state's very beautiful with the snakes, and the racoons, and the poison ivy, and all that?
A No, I do not.
Q Okay. And, so, if that's the natural state, you don't like it?
A That's right.
Q If you had to choose between the natural state of that accreted land and cutting it down to three feet, so that you could manage it, which would you choose?
A The three feet. On trees too.

Q All right. What if in the course of cutting it down to three feet that meant that there were fewer racoons, and rats, and snakes. Would you still cut it to three feet?
A Oh yes.
Q Okay. What if it meant that there were fewer birds out there if you cut it to three feet at the same time?
A I don't see any birds out there.
Q Well, that's not what I'm asking. I'm hypothetically speaking.
A I see them fly in the sky, but I have not seen them inside the accreted area.
Q If, hypothetically speaking, if cutting it to three feet, instead of where it is right now, would reduce the number of birds that nest in there, would you still be in favor of cutting it back to three feet?
A There's no birds out there.
Q Well, I'm asking you hypothetically.
A Hypothetically?
Q Yeah. Assume that there are a hundred birds nesting out there right now, and that if you'd take it down to three feet there are only going to be fifty birds nest out there. Would you still favor -
A Still looking for three feet.
Q Okay.
A Three and three.

Q How about the - Up there at the top the Council finds that the accreted land area is constantly shifting in unpredictable periods of time, and sand dunes, and vegetation that ceaselessly change, and all that stuff. You read that to us a second ago.
A Uh-huh.
Q If cutting down to three feet would be less beneficial, in terms of holding the soil in place, than the current rule, would you still be in favor of moving it down to three feet?
A Could you repeat that, please?
Q Okay. If you found out that the current rule of five feet did a better job of holding the dunes, and the soil, and the sand in place than would be done if the rule changed down to three feet, would you favor keeping it at five, or would you still want to go to three so your views improve?
A Three.
Q Okay. Now, in this section that the Council also found that these, this area, the accreted land, left in natural state provides protection to adjoining land owners and their properties from the hazards of high tides and floods caused by hurricane's, tropical storms, and seasonal tides. If you learned that cutting down to three feet would decrease the protection that, that was giving you, would you still want to reduce the cutting height so that

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you had a better view?
A No. Cut it to three.
Q Okay. So even - If cutting down to three feet, changing that rule from five foot down to three foot, increased the number of rodents that were out there, would you still want to move it down to three feet to improve your view?
A Yes. I paid for a view. And I paid millions of dollars to have a view, and I don't have one now.
Q Okay. So it's all about the view?
A Yes.
Q Natural, un-natural, you want your view?
A Correct.
Q Okay.
A That's the way it was in '81.
Q More rodents, less rodents, you want the view?
A I want the view.
Q Now, you mentioned how it was in '81. Were you out there at the house you currently own, did you visit that house in 1981?
A No. I'm just looking at y'all's notes and what it said that we had in '81.
Q No, no --
A And I remember when there was, it was just flat. That was around '91.
Q This house that you live in now, when did you first visit

it? Before you ever bought it, when was the first time you were ever out there?
A Probably the year I bought it.
Q Okay. So, you don't know what it looked like in front of that house in 1981, do you?
A In '81?
Q '81.
A I remember that, that whole frontal along there was flat and it just had wild flowers, and sea oats, and the sand dunes. Then it approached the house. Now, I see that from the front beach walking along, just looking at it, or whatever. I use to take a lot of walks on the beach because I had another house over there at the time too, back in 1981.
Q What house was that? Because I asked you that –
A I gosh. I know who sold it for you. It was on the corner of 23rd and Atlantic.
Q Was that front beach or not front beach?
A Second row.
MR. VAN RAALTE: Let me turn your attention now to Tab 3-B. Yes, there we go. This is the 1995 version of the ordinance. And I'd like you to take a look down at the heading that says Section 21-37. You see that section

line there?
MR. ALBENESIUS: I do.
Q Could you read that section line for me where it says 21-37.
A Recreation and conversation (RC) area; findings of fact and purposes.
Q Okay. Could you read the paragraph below. You can just read it to yourself.
A You talking about the one highlighted?
Q Yeah. That whole paragraph, just read it to yourself.
A (Witness complies). Okay, I read it.
Q Okay. Would you agree that, that set of fact findings looks pretty much like the one that we just read a second ago in the older ordinance?
A I don't remember reading this in 1981.
Q Okay. Well, I'll tell you what, why don't we flip back then. We've got plenty of time. Tab 2-B and you can compare the two. I mean, things like area of particular beauty in it's natural state, and aesthetic value. We just talked about that a second ago, didn't we?
A That's before the trees started growing up.
Q Okay. But the text is generally very similar to the '81 version?
A You mean the '95?
Q I'm sorry the '81 and the'95, the text is similar.

A I don't know that I agree with this.
Q You don't agree that the written fact findings are similar, or you don't agree with the fact findings being accurate?
A Fact findings being accurate.
Q Okay. Would you at least agree that these are the kind of things the Town Council ought to be thinking about? I mean they might've gotten the wrong answer but, you know, is flood safety something that is appropriate for Town Council to consider?
A You said flood?
Q Flood safety.
A Yeah. I think they should consider it.
Q Okay. How about erosion, is that something that Town government ought to be considering?
A You know, I don't know of any erosion in that area.
Q Okay. Accretion, is that something they should be considering?
A They never bothered with it before. They just, it was accrete and then ..
Q Hurricane's, is that something that, hurricane safety, is that something that Town Council ought to be considering?
A I would say so.
Q Okay. How about the aesthetic values associated with that accreted land, is that something they should consider.

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A Yeah. They should consider it, that's why we're sitting in here today.
Q How about the health, safety, and welfare of folks on the island, should they consider that?
A What, health, what?
Q Health, safety, and welfare?
A You know, we don't have a healthy environment right now, there in the accreted area.
Q Well, I mean, it sounds to me like what you're saying, and correct me if I'm wrong, but - you'd agree that the Town Council ought to be considering public health and safety, you just think that they got the wrong answer when they made that consideration. Is that correct?
A What consideration are we talking about, you talking about the trees and vegetation?
Q Right, and how they're managing the accreted land.
A Right.
Q Okay. So, it's valid to think about some of these issues, you just think they got the wrong answer when they thought about them?
A Yeah.
MR. VAN RAALTE: Okay. Let me turn your attention now to Tab 1-B. It's up at the front of the book.
MR. ALBENESIUS: You say, 1-C?

MR. VAN RAALTE: 1-B as in boy.
Q All right. Now, Section 21-67 deals with the findings and intent of the RC Area Districts. Could you read that area, that Section A, that's right below that at the top. I think there are five or six numbered paragraphs.
A RC Area Districts' findings of fact.
Q Could you go ahead and read through those fact findings for me.
A The boundaries of the RC Areas are constantly shifting over - We've already been through this. Over unpredictable periods of time, in that they are composed of sand dunes and vegetation that ceaselessly change, and that these areas are prone to flooding, and therefore, not suitable to development for any purpose (as read).
Q Let me jump in for one second. Now, I heard you say that we've already been through this. Would you agree that these fact findings here in the 2005 ordinance are very similar to the fact findings that we've just been talking about in the other versions of the ordinance?
A Where else did I read this?
Q Well, you've read it twice. Once was at Tab 2-B, up at the top of the page, and the other one is at Tab 3-B.
A Yeah. I remember that.
Q And, you know, my -
A I don't necessarily agree with it.

Q I understand that you don't agree with it, but all I'm asking you is - This is a set of findings of fact, right?
A That's what they said.
Q Okay. And there have been similar findings of fact in the other two versions of the ordinance we looked at, right?
A Yeah.
Q Okay. You haven't agreed with any of them but they're written, you know, they're in writing, and they're on the page, correct?
A Uh-huh.
Q And these all deal with the management of the accreted land, don't they?
A I don't know. All I know is that I'm just looking for three foot and three foot on the accreted land.
Q Okay.
A And that's what my deal is, and I don't know about all this other stuff they wrote down here, and somebody decided it or whatever.
Q What you want, just to make sure we're clear, you want three feet, you're not looking for the natural state, you're not looking for all these fact findings, you're, you know -- You'd even be willing to live with a few more bugs and rats. What you want is three feet so you got a view.
A You going to have less bugs and rats if you have three

foot versus five foot.
Q What if you didn't, what if I told you, you were going to have a couple more bugs and rats. Would you still want the three feet?
A Then I'll deal with them.
Q Okay. Bare with me for one second. Turn to Tab 4-A for me.
A Okay.
Q Are you familiar with the fact that, under the current ordinance, if you want to trim the vegetation out in front of your house on the accreted land that, generally, you'd have to go through a process with the Town.
A Right.
Q Okay. And what's your understanding of the current process?
A You pay a fee of about $250. and you pay a contractor, who picks up the permit. You pay a contractor to cut the land down to five feet on Crepe Myrtles. I think that's all you can cut. You can't cut any trees.
Q Have you ever broken that law?
A No.
Q Okay. Did you consider filing an application to cut after you bought the house?
A Yes. But I changed my mind.
Q Okay. And that's what this documented, Exhibit 4-A is,

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right?
A Right.
Q Reflecting that you applied and then you pulled it back.
A I didn't apply.
Q Okay. Well, why did you change your mind about applying under the five foot rule?
A I didn't want to spend the money.
Q Why not?
A I just didn't.
Q Okay.
A But I did it again -
Q Well, hold on for one second. You didn't want to spend the money. If it had been three feet would you have been willing to spend the money?
A Yes.
Q Okay. So was it the money or was it you didn't think you were going to get enough out of it?
A I didn't think I would get enough for the bang.
Q Okay. If you had to spend that money, but you could cut to three feet across the board, you'd happily have spent that money, right?
A Yes.
Q Okay. Let me turn your attention now to Tab 5.
A Okay.
Q What's this document?

A It's a permission to cut.
Q Okay. And you were asking for permission to cut to three feet based on the 1981 ordinance, right?
A Right.
Q Okay. Now, you just told me that you had considered cutting under the five foot ordinance and decided not to do it, right?
A Right. Decided not to do it. This is a year later.
Q Well, did you think that they had somehow, in that intervening year, repealed the five foot rule and put this 1981 back on the books?
A I just went for a three foot ruling to see whether or not they would give me the permit.
Q Well -
A There's people getting permits at three feet.
Q So you knew that the five foot rule was on the books, but you just decided to try to slide the letters through at three feet?
A No. Not slide it through, I handed it to them very nicely. And they saw it, and they read it, it's very easy to read, and they denied it.
Q Right. Well, let me re-phrase it. Maybe, "slide it through" got us on the wrong path. You knew the rule was five feet on June 23rd, 2010, right?
A Right.

Q But your letter that you submitted on that day didn't ask for five feet, did it?
A I asked for three.
Q Okay. And you knew at the time you were asking for three that three was not allowed by the ordinances, right?
A That's correct. I was hoping that they would grant it.
Q Okay. Wouldn't they have had to break their own law in order to grant that?
A I don't know. I'd be up to them.
Q Now, you mentioned that there were some folks that were getting the permits to cut at three feet at the time and that's what prompted you to do it.
A I heard it, didn't see it.
Q Well, who did you hear got them?
A I don't - I don't have a clue.
Q Any addresses, properties that you know of?
A No.
Q Did you report those people to Town Hall since they were violating the ordinance?
A No, I didn't.
Q Okay. Now, we're going to come back to this one in just a second but turn one more page to Tab 6. Read that for me.
A You mean the one with Bluestein?
Q Yeah. Are you familiar with that letter?
A No. Cutting and pruning of vegetation in front of 2513

Atlantic Avenue. I would request that the Town give me a permit to cut all vegetation to three feet in front of my residence at 2513 and was specifically authorized and allowed by Section - of Sullivan's Island Town Code and Ordinance, ratified in 1981 (as read).
Q Would you agree that the text of that letter looks remarkably like the text of your letter that we just looked at, at Tab 5?
A No. He's got some - allowed by. He put the word ratified 1981 in it.
Q You don't see any similarity between your letter and Mr. Bluestein's letter?
A I think they're just standard letters.
Q What are the odds that you would come up with just a standard letter, and Mr. Bluestein would just, coincidentally, come up with the same standard letter?
A I don't know.
Q Did you ever talk to Mr. Bluestein about this 1981 ordinance or filing the request for three foot cutting?
A No, I didn't.
Q How did you come up with the idea to do it?
A What the three foot?
Q Submitting this letter.
A I wanted to try and do three.
Q Well -

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A I was trying to shoot for three. I thought that, maybe, they might just say, okay, three foot, we'll let it go.
Q Well, I guess, what I'm asking is, did you talk to anybody about this letter, or you just thought it up on your own?
A I thought it up on my own.
Q Did you send this by United States Mail to Town Hall or was it hand-delivered?
A Oh, gosh. I don't remember. I think it was hand-delivered.
Q Is there any possibility that Mr. Bluestein was the one that hand-delivered it?
A No. I wouldn't see how he would do that.
Q Had you ever, prior to submitting this letter, talked to anyone about the idea of applying for three feet under the '81 ordinance?
A You mean, in reference to this letter?
Q Yeah. Before you write this letter, presumably, you get the idea, hey, three feet was allowed under '81 and I want to give it a try. Is that fair to say?
A Yeah.
Q Did you ever talk to anybody about that idea?
A No. I didn't.
Q You never mentioned it to your wife?
A Yeah. She signed it.
Q Okay. But you never talked to Mr. Bluestein about it?

A No. I didn't.
Q Never talked to any of your other family members?
A No. I only seen Bluestein one time, and he walked my property with a couple of attorney's. And that was the last time I've seen him until today.
Q Just to make sure I've got this right, submitting this June 23rd letter was an idea that you came up with completely on your own, and the phrasing was completely on your own, totally independent of Mr. Bluestein or anybody else in the universe?
A To the best of my knowledge, yeah.
Q Now, this 2005 ordinance that puts the five foot rule in place, that you don't like, the species limit, five feet, all that stuff. Why is it that you decided to sue now, four or five years after that ordinance was passed?
A Well, I bought the house on front beach and prior to that I've only had second row houses. And I've sold those, sold a couple of them. And I did the one on front beach, and I was standing out there one day with my wife, after about three months that we owned the place, this must've been around August or something like that. I said, look at this stuff just growing. And I said, it's just growing. She said, well I've got a picture of what it looked like when I came in here. She showed me the picture, and I looked at it, and I said, boy, this thing

looks a lot different then when I bought it.
Q Is this lawsuit the first lawsuit you've ever filed to invalidate the 2005 cutting rules?
A The only one towards the 2005 cutting rule? Say that again.
Q Your current lawsuit seeks to throw out, invalidate, the five foot cutting rules.
A Uh-huh.
Q Okay. Is this the first lawsuit you ever filed seeking to throw out the five foot rule?
A I don't know, you'd have to ask Bobby Hood on that. I don't know.
Q In any prior year before this one was filed in, I guess, in 2009? Did you ever sue in 2005 to throw out the --
A No.
Q How about in 2006?
A No.
Q Okay. 2007?
A When did I buy the house, 2009
Q 2009, yeah.
A No.
Q Okay. 2008?
A No.
Q Okay. Did you ever sue to try to get the 1995 seven foot rule thrown out before this one?

A No.
Q And, you know, again, why did you decide fifteen years after the fact to try and tackle the seven foot rule?
A How many years?
Q I think it's fifteen since 1995.
A And what was the question again?
Q Well, your lawsuit seeks to go all the way back to 1981's rules.
A Uh-huh.
Q And so, you know, as I understand it, and you correct me if I'm wrong, but what you want to do is, throw out the five foot rule that was put into place in 2005. But you don't want to just go back to the 1995 rule because that was seven feet and you don't like that either. What you want to do is go all the way back to 1981, correct?
A Correct.
Q Okay. And we just talked about how you never filed suit before this action trying to get the 2005 suit [sic], 2005 ordinance invalidated.
A No. I don't think so.
Q And, I'm saying, why did you wait fifteen years before you decided to tackle the 1995 version?
A I didn't wait fifteen years. I did it in '09.
Q Okay. Fourteen years then?
A I think you better ask Bobby Hood that question. I don't

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have the answer to that.
Q You mentioned that you had a photograph of the accreted land that was taken when you bought the property and that you and your wife were comparing it. Where is that photograph?
A I think my wife has it right now.
Q Okay. Has a copy of that been provided?
A No. Noone asked for it.
Q Okay. If we could go ahead and get a copy of that, I'd appreciate it. Do you agree that you don't actually own title to the accreted land?
A I don't know if I do or don't.
Q Well, you bought this property for millions of dollars in July of 2009, right?
A Right.
Q Okay. Are you telling me that you don't know what you bought?
A I'm not sure what I own. I mean, I didn't have a survey. So, I don't know if I own the accreted or don't own the accreted. I don't know who owns the accreted.
Q You think that you might own it?
A I don't know.
Q Okay. Do you think that your front property line extends all the way down to the mean high water mark in the beach?
A I don't know. I don't have a survey, so I don't know what

is owned there.
Q Did you get a plat or a legal description when you bought the property?
A Honestly, I don't know.
Q Okay. You attended the closing, right?
A Yes.
Q Okay. And was there a deed prepared that dealt with your property and conveyed it from the seller to you and your wife?
A I don't know.
Q So you don't know if you have a deed to your property?
A I'm not real sure on those legal things or whatever. I mean, I had my lawyer there, he does an excellent job, and whatever he says I just follow him.
Q All right. So you didn't independently investigate where your property line was, whatever your lawyer said was fine with you?
A Yeah.
Q Okay. What's the first date that you read the Code of Ordinances of Sullivan's Island dealing with the accreted land?
A Oh, probably three or four months ago.
Q Are you familiar with a deed to the accreted land?
A No, I'm not.
Q Okay. First of all, I guess I should say this, do you know

what I mean when I'm talking about the accreted land?
A Yes, I do.
Q Okay. The land out between your house and the ocean, and it's got the bushes, and the trees, and all that stuff.
A Right.
Q Okay. So, you're not familiar with the deed to the accreted land?
A No.
Q Okay. And you're not familiar with any deed restrictions to the accreted land?
A Deed restrictions to the accreted land?
Q Correct. Have you read those?
A You'll have to let Bobby Hood answer that question. I don't know.
Q Well, I'm just asking you if you've read them. I'm not asking you to interpret them. Have you read them?
A I don't remember reading anything, but I'm not sure either.
Q When you tell me the reasons that - Well, let me go ahead and ask you again. Why is it that you're entitled to a view of the ocean?
A Because I had that view and those breezes when I first arrived there. And then like three months later, with going into the summer season, and, of course, everything grows, and it grow, it grew, rather. And then I checked

into it, and I found that I had to cut it down to five feet. And that was about that.
Q Just to make sure I understand. What you're saying is, you bought in July of 2009 and that you think that your right's were frozen in time right then. If you could see the ocean on July 15, 2009, that's the view that you bought and that's the view that you're entitled to. Is that your position?
A That wasn't my feeling when I bought the property.
Q What was your feeling when you bought the property?
A What I saw, which was the clear view, is what I was going to have.
Q Okay. Well, that's all I'm asking. I mean, your expectation of when you went and toured the property and you made an offer on the house.
A Right.
Q That's what you thought you were buying?
A Right.
Q And that's what you think you're entitled to today, correct?
A I'm entitled to the same views.
Q Okay. You're not basing what your views should be on any particular document from the past, you're basing it on what you saw when you purchased the property, correct?
A What I saw when I bought the property, right.

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Q Okay. Now, in the purchase of going out, and walking the property, and putting an offer on it, and all that, did you ever ask the realtor or the seller about plant growth, cutting rules, those kind of things, out in front of your house?
A No.
Q Prior to buying the house, did you ever go to Town Hall and look at the cutting permits that prior owners had on file with respect to your house?
A No. I didn't.
Q Okay. Why didn't you do that?
A I didn't know to do it.
MR. VAN RAALTE: Let me turn your attention to Tab 4-B for just a second.
MR. ALBENESIUS: 4-B?
MR. VAN RAALTE: Yes, sir.
Q Am I correct that these documents deal with 2411 Atlantic Avenue, which is the house you purchased?
A Yes.
Q Okay. And these were filed in '09 and previous years, correct?
A In '09.
Q Mrs. Ostrover wasn't applying under the 1981 three foot ordinance, was she?
A Well, she applied in '09. So it would be the five foot

rule.
Q Okay. Am I correct that you're claiming that the 2005 cutting rules, the five foot rule, devalues your house?
A (Non-verbal response)
COURT REPORTER: Derk, I'm sorry, I didn't hear his response.
Q I had asked if he agreed that the five foot rule devalued his house. And you responded, Mr. Albenesius, affirmatively, is that correct?
A Say that again.
Q Would you agree that you're claiming that the five foot cutting rule in 2005 has, essentially, devalued your house?
A Yes.
MR. VAN RAALTE: Let me turn your attention to Tab 7, please, just for a moment.
MR. ALBENESIUS: Okay.
Q All right. Would you agree that this Charleston County Auditor sheet reflects certain transactions associated with the property you bought?
A Yeah, different transactions. Uh-huh.
Q Look at the one dated, sale date April 30, 2004, for a second. And tell me what the sale price was.
A I don't see the sale price on it.

Q It's in the far right-hand column.
A April 30, -- Three million.
Q Okay. The very top, July 15, 2009 that's when you bought it, right?
A Right.
Q What's that number sale price?
A Three million one.
Q Okay. Is 3.1 million bigger than three million even?
A Yes, it is.
Q Okay. So, would you agree with me that the value of the property rose, even after the 2005 ordinance was in place?
A No. I don't think that had anything to do with the ordinance in place. Actually -
Q Well, I'm not asking if it was because, I'm asking if -
MR. HOOD: He was in the middle of answering that. Let him finish.
MR. VAN RAALTE: You can go ahead and -
Q I wasn't asking about causation, I was simply asking if, you know, basically the 2005 ordinance was adopted between April of 2004 and July of 2009?
A Yes, it was.
Q Okay. And the value in 2004 was lower than it was in 2009, right?
A The value is more in '09.
Q Okay. And so -

A But that's not much of an increase on Sullivan's Island. I mean, Sullivan's Island normally goes up at a rate of about ten percent per year. And this isn't a ten percent increase. And I didn't get this better price because of the cutting, I got it because the people had the house, had a $5,000,000. house they were building down the street, and they needed to get the money out.
Q So, essentially, - You know, it sounds like maybe there were two things going on. Was 2009 kind of a tough economic period in the country?
A It was.
Q Okay. And at the same time you mentioned that the sellers were building a more expensive house and needed to go ahead and get out of this one.
A Right.
Q And so, you made a savvy business deal, right?
A I think I did okay.
Q Well, as you said, it didn't go up ten percent when you bought it, so..
A No, it didn't.
Q You feel like you did well on the purchase?
A I think I did all right.
Q But you still paid more than what the last purchaser had bought it for a couple of years prior?
A Yes, I did.

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MR. VAN RAALTE: Excuse us for one second.

(BREAK)

MR. VAN RAALTE: You want to wait for Walker to get back.

MR. HOOD: No. He's gone to get him some water. Go ahead.

MR. VAN RAALTE: Mr. Albenesius, that's all the questions I've got for you today. I appreciate you coming in very much. And it may be that Mr. Hood has some follow up questions.

MR. HOOD: I don't. We're through, thank you.

(Whereupon, at 2:33, the deposition in the above-entitled matter was concluded.)

ERRATA SHEET

In re: Nathan Bluestein, Ettaleah Bluestein, Theordore Albenesius and Karen Albenesius vs. Town of Sullivan's Island and Sullivan's Island Town Council.

Deponent: Theodore Albenesius.

Date of Deposition: January 18, 2011.

Court Reporter: Michelle Dawson Lloyd.

: Said testimony is correct as is and requires no changes.

: I desire the following corrections to be made.

CORRECTIONS:

I WISH TO MAKE THE FOLLOWING CHANGES FOR THE FOLLOWING REASONS:

PAGE LINE (use additional sheets, if necessary)

CHANGE:

REASON:

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REASON:

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING TESTIMONY IS TRUE AND ACCURATE.

SWORN TO BY ME THIS DAY OF , 2011.

(Signed)

State of South Carolina)

) Certificate

County of Charleston)

Be it known that I took the foregoing deposition of THEODORE ALBENESIUS;

That I was then and there a notary public in and for the State of South Carolina at-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

That the Deponent reserved the right to read and sign the deposition and has been provided a copy of same. However,

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said matter having been scheduled for hearing within the allotted time for the deponent to review the transcript and submit any changes deemed necessary, the original transcript if being submitted without the signature and/or Errata page attached;

The foregoing transcript represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 7th day of February, 2011.

Michelle Dawson Lloyd

Notary Public for South Carolina
My Commission Expires: 8/30/2020

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