THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Karl A. Folkens, Special Referee

Case Nos: 2015-CP-26-1084 / 2013-CP-26-5530

Appellate Case No.: 2017-001646

RECEIVED
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SC Court of Appeals

Jericho State Capital Corp. of Florida, Plaintiff,

v.

Chicago Title Insurance Company, Defendant,

AND

Lynx Jericho Partners, LLC, Plaintiff,

v.

Chicago Title Insurance Company, Defendant.

Of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC are the Appellants,

And Chicago Title Insurance Company is the Respondent.

RECORD ON APPEAL

VOLUME THREE

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A. Asset checks sometimes. Document retrievals.
Q. Nowadays can you tell me what percentage of your work is commercial as opposed to residential?
A. I don't always know because I just get the TMS number and sometimes an owner's name, and if there is a buyer, I'll get the buyer's name. I don't need to know.
Q. How much do you normally charge for a title examination?
A. Well, it could range from $400 up, depending on the volume that you have to do.
Q. Even for a simple residential title search you charge at $400?
A. Well, I have some attorneys that I do work for and I do all of their title work so I give them a break on that, maybe $300 or something.
Q. Do you do work for Mr. Newby's firm?
A. I don't now. I might have in the past but he has his own in-house person.
Q. The firms that you only do work for, can you give me some of those law firms?
A. Robin Ciaccio. Spelled C-i-a-c-c-i-o. Harry Hancock in Columbia. I have done some work for the Thompson & Henry law firm in Conway. Rice.
Q. Donald?

A. Yeah, Donald Rice. Not lately. It's been a while.
Q. Any others that you can recall worth mentioning?
A. No, not right now.
Q. How many titles have you checked in the, for example, last month, can you give me a ballpark figure the month of June?
A. Well, it slowed down considerably so I'd probably say four, maybe five.
Q. In the year 2013, how many titles do you believe you checked?
A. I don't really know. I don't know.
Q. Over 50?
A. Maybe not that many. Maybe 45 or so.
Q. It was real busy around here in what, 2005?
A. Yes.
Q. How many titles do you think you were checking back then?
A. Well, you know, we deal in updates, we deal in current owners and we deal in full titles. It's kind of hard to say but maybe time and a half.
Q. So it would be probably 70 or 80?
A. 60 or 70 maybe.
Q. And you have E&O coverage?
A. Yes.

Q. Who are you paid by, are you paid by the law firms that hire you?
A. Yes.
Q. Do you do any work outside of Horry County?
A. Yes.
Q. What other counties do you work out of?
A. Marion, Florence, Dillon, Darlington, Georgetown.
Q. Have you ever been hired by title companies to check title?
A. No, I don't remember any.
Q. How about title insurance companies?
A. No, not that I can recall.
Q. Do you hold any licenses?
A. No.
Q. I think I may have asked you that. Have you ever been deposed before like we are doing today?
A. Yes.
Q. How many times?
A. I don't know. Probably more than 20 over the years.
Q. Was it all in relation to being an expert in a case?
A. Yes.
Q. Have you ever been a party to a lawsuit before?
A. As a defendant?

Q. Yes.
A. No.
Q. How about as a plaintiff?
A. No.
Q. Have you ever had to testify in court before other than your work as an expert?
A. No.
Q. So is it fair to say you have been an expert, well, you have been deposed around 20 times, but how many times do you believe you have been an expert?
A. Witness?
Q. Yes. Whether you were deposed or not, where you were asked to assist lawyers like you did in this case, you provided an affidavit?
A. I don't know. Maybe 50.
Q. In those cases where you were deposed or any of those cases where you served as an actuary, did you have to testify in court before?
A. Yes.
Q. How many times have you testified in court?
A. I don't know. Over the years 25, 30, 35. I don't know.
Q. Tell me how you do title searches generally? From the process of you first getting contacted,

what information is provided to you and your end product, can you take me through the steps of what you normally do?

A. I normally get a tax map number and/or the seller's name and the buyer, in the case where it's a buyer. I normally go to the county computer system and put in the TMS number in the tax assessor's office and go to the sales file. It gives us some books and pages of the last several transactions. I write down those books and pages and that gives me a starting point.

I abstract the most recent deed and then I go backwards for 40 years or 60 years or whatever they need. And then you have to go, of course, and check each of those owners during those periods that they owned it. And if it's within the last ten years, you have to check any judgments, federal tax liens, that kind of thing.

When I finish, I usually do a report and tell them what I find, any exceptions to the report. Sometimes they want them typed and times they don't want them typed and I just supply the notes, if that's what they need. I check the taxes, I check with the tax assessor's office.

I check Planning and Zoning and I give

them the TMS number and they check on their system to see if we lie within any special zoning or anything like that that's on their map, and then they let me know that. If I find something in there I add that exception to it, to the report.

Q. So you have a tax map number that's provided to you?

A. By the law firm.

Q. The law firm is giving you some information, sometimes it's the address, sometimes it's a tax map number, but it's normally coupled with the name of the seller, the current person who owns it; is that right?

A. Correct.

Q. And then you go to the tax assessor's office and you look at a tax card, is that what you do?

A. No. We used to do that but they don't let us do that anymore. We have to use the computer system the county has.

Q. What do you pull up, do you pull up the notes?

A. You pull up the records of the last four or five transactions.

Q. The tax assessor has that?

A. In the system, yes.

Q. And that's your starting point?
A. Yes, most of the time.
Q. So, say the owner's name is John Smith. You get the last five transactions and you're able to run the chain of title back, right?
A. Yes.
Q. And you do it by name?
A. What you mean "do it by name"?
Q. You don't check title by parcel, you check it by name; correct?
A. Both, actually.
Q. Well, you looked in an index; correct?
A. Right.
Q. And the index is of names; correct?
A. Correct.
Q. It's not of parcels; correct?
A. That's true. If you find documents, then it's a matter of parcels, you know.
Q. Explain it to me. If I'm looking for a property owned by John Smith, I look to see who John Smith got it from, right?
A. That's correct.
Q. So I check John Smith for mortgages; correct?
A. Yes.
Q. For deeds out; correct?

A. Yes.
Q. I check for stuff like mechanic's liens and judgements; right?
A. Yes.
Q. Tax liens?
A. Yes.
Q. State and federal?
A. Yes.
Q. What else am I missing? I mentioned judgements, I think.
A. Yes.
Q. And you check him; right?
A. Yes.
Q. And then you're done with him and then you go to the person from whom you purchased the property; right?
A. That's right.
Q. And you do the same with him?
A. That's right.
Q. And you go as far back as the attorney instructed you to go back; correct?
A. Correct.
Q. And all that is done by name, and the deed book would have a grantor, grantee index; correct?
A. Correct.

Q. And when you look for mortgages, the mortgage book, the mortgage indices would have a mortgagor/mortgagee index; correct?
A. Yes.
Q. And you would look under the mortgagor index under the name of the owner at that time?
A. That's correct.
Q. With respect to mechanic's liens, does Horry County have a separate mechanic's liens book?
A. Yes.
Q. You check under the name; correct?
A. Yes.
Q. You don't check under a TMS number; correct?
A. No.
Q. You don't check under a parcel number; correct?
A. No.
Q. With respect to state and federal tax liens, it's against the name not against the parcel; correct?
A. That's right. It's indexed that way. It affects the parcel but it's indexed that way.
Q. But how do you find things? You find things by the owner of the parcel; correct?
A. Correct.
Q. The same thing with judgements; correct?
A. Yes.

Q. And going back to the places where you look, your job is to look in the Register of Deeds; correct?
A. Yes.
Q. And the Register of Deeds would be for most of the things we discussed, mortgages, deeds. I guess mechanic's liens are filed at the Register of Deeds?
A. Right.
Q. The tax liens would be filed at the Register of Deeds; correct?
A. Right.
Q. And that's basically the extent of the information you would find -- are there hospital liens here?
A. No.
Q. What else would you find at the Register of Deeds office?
A. I think that's all.
Q. And then you go to the Clerk of Court's office; right?
A. Yes.
Q. And you look for judgments?
A. Yes.
Q. And those judgments are indexed under the name?
A. Correct.

Q. And you also look for lis pendens; correct?
A. Correct.
Q. And lis pendens would also be indexed under name?
A. That's right.
Q. Not parcel?
A. No.
Q. Where else would you go? We've talked about two offices, Register of Deeds and Clerk of Court. Where else would you go?
A. Well, if we find on the tax index, the property tax index that there are taxes owed or if we can't tell --
Q. You go to the assessor's office. I forgot that.
A. The treasurer.
Q. The treasurer. I forgot that. You check taxes. I should have mentioned it before. You go to the treasurer's office and you see that the taxes are up-to-date?
A. Right.
Q. So you go to three buildings. It might be the same building.
A. Three departments.
Q. You go to the Register of Deeds, Clerk of Court and the treasurer. Anywhere else that you go in order to do title examinations?

A. Yes, Planning and Zoning. And that's where they have the access to the county map.
Q. You go to the Planning and Zoning?
A. Right.
Q. Do you go to the Planning and Zoning every title examination?
A. Yes.
Q. What do you do at the Planning and Zoning?
A. I give them the tax map number and they call it up on their map system and determine if it's actually lying within any special zoning, spoilage area, on the waterway, that kind of thing.
Q. So not only do you provide your attorneys -- let me back up. You provide a title report to your attorneys with stuff you find in the Register of Deeds, Clerk of Court, and the treasurer's office; correct?
A. And Planning.
Q. And if you miss something, you're liable; right?
A. Yes.
Q. You also go to Planning and Zoning; correct?
A. Yes.
Q. And you provide a complete report on planning, how the property is zoned. Do you provide a

zoning certification letter?

A. No, no, no, that's not what I said.

Q. Well, tell me.

A. I give them the tax map number and ask them to call it up on their official map that they use that the county currently updates, and determine if it lies within a spoilage area or special zoning area or special tax district or anything that we, you know, need to know about to inform our client of something pending.

Q. And they check it with the tax map number?

A. Yes.

Q. And then you provide that information to the attorney?

A. Yes.

Q. Would you agree with me that zoning does not effect title?

A. It might not effect title. That's a legal question that an attorney would have to answer. But they would want to know if it's a problem with the zoning.

Q. So tell me, when you go to the Planning and Zoning, is there a computer?

A. Yes.

Q. And in the computer you punch in the TMS number?

A. They do it.
Q. They do it.
A. Yeah. I'm right there at the window and I give them the TMS number and they turn it around and show me on their map where it is.
Q. Do other abstractors do the same thing?
A. I don't know.
Q. As part of your job, do law firms actually do an update report?
A. No. I used to do that. There is a gentleman over there now that does updates and records. Most of them send them to him.
Q. But you have done it before?
A. Yes.
Q. And you know what the standards are to update and record; right?
A. Yes.
Q. Does the Register of Deeds accept documents to record that were not witnessed and notarized?
A. No, or they're not supposed to. They have in the past but --
Q. Going back to your work at Planning and Zoning. You go to the desk, you give them a tax map number?
A. Right.

Q. What information do you get back from Planning and Zoning?
A. They show it to me on the screen, on the computer screen, where my parcel is located, and inform me that it's not lying within any special district or special zoning or that kind of thing.
Q. What other information besides zoning would they give you? For example, you mentioned a spoilage area.
A. Yes.
Q. That would be like maybe on the Intracoastal Waterway spoilage area; right?
A. That's correct.
Q. You talked about whether it's zoned, like industrial or something like that. Would you report that information to the lawyer?
A. Yes.
Q. If it's a special tax district that has some kind of funky tax assessment, you report that to the attorney?
A. Yes.
Q. What other information would the Planning and Zoning people provide to you?
A. Well, you know, if we find something then they determine if it's in a special zone, if it's in a

special tax district, if it's in a spoil, and that's the information they give me. Then I add that on my report as Planning and Zoning says lies within the spoilage area, that kind of thing.

Q. Tell me, in your experience, being a title examiner for a very long time, how would a condemnation action pop up in your title search?

First of all, do you know what a condemnation action is?

A. Yes.

Q. Explain to me what you believe a condemnation action is?

A. For instance, with the Highway Department, if they take eminent domain or whatever, that kind of thing.

Q. How does that normally look? Where is that found, Register of Deeds, Clerk of Court?

A. Well, there is a, the case is filed in the clerk's office but the results of that, you know, we'd find that when we check the judgements against the name.

Q. And the judgement would be -- tell me how you would find it? I mean, do you know what a condemnation notice is?

A. I'm not sure what you're asking me.
Q. For example, the South Carolina Department of Transportation files a condemnation notice in tender of payment. It also files a lis pendens, it describes the property that they're taking, usually with some funky DOT number of survey, map station or something like that, perhaps a survey. Have you seen those before?
A. Yes.
Q. Is that what you understand to be a condemnation action?
A. Right.
Q. And you normally find those in the Clerk of Court's office when you run across a lis pendens against an owner in the chain of title; correct?
A. Correct.
Q. And then is there something subsequently filed in the Register of Deeds' office?
A. Yes. I don't know in every case but sometimes they do file.
Q. Do they file the condemnation notice in tender of payment in the Register of Deeds' office?
A. Right.
Q. Is it called an annotated condemnation notice of tender of payment, have you heard that term

before?

A. I've heard it before. I'm not sure if that's what it's referred to.

Q. If a property has been condemned by a state government, would it be by virtue of finding a condemnation notice in the Clerk of Court's office and/or the Register of Deeds?

MR. NEWBY: I'm going to object to the form.

A. I don't know. I don't know.

Q. Have you discovered condemnations through deeds filed in the Register of Deeds' office?

A. You mean as a reference to the condemnation?

Q. Yes.

A. Yes.

Q. As a reference to a prior condemnation?

A. Yes.

Q. But the condemnation is not normally done by deed, it's done by some judicial action; is that correct?

A. That's right. I'm not an attorney but --

Q. I understand. You were hired as an expert in this case; correct?

A. I guess, yes.

Q. You were hired to provide an Affidavit in this

case?

A. Yes.

Q. And that's sitting right in front of you; right?

A. Yes.

Q. Are you familiar with the property involved in this case?

A. Sort of. I mean, I have seen a map with the road on it.

Q. It's tax map number 178-00-05-032 and it's 131.4 plus or minus acres. Today it's owned by Jericho State Capital. Have you checked title to this particular piece of property?

A. No.

Q. Have you been asked to check title to this piece of property?

A. No.

Q. Who hired you to be an expert in this case or do whatever you have done in this case?

A. Mr. Newby.

Q. How much time have you spent on this case thus far?

A. Maybe two hours.

Q. So you have billed Mr. Newby for two hours?

A. Not yet.

Q. How much do you charge per hour for your expert

fees?

A. It's usually $200.

Q. What did Mr. Newby ask you to do?

A. He asked me if I was aware of the official map the county uses, and I told him, Yes. And then he wondered if I would be willing to sign an Affidavit that I was familiar with it, and I said, Yes. And, so, I did that.

Q. Did you prepare this Affidavit?

A. No.

MR. KOUTRAKOS: Let's get this marked as an exhibit. Go ahead and mark that as Exhibit No. 1.

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(Thereupon, Exhibit No. 1 was marked)

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Q. The Affidavit, that's what you have in front of you right there?

A. Yes.

Q. Exhibit No. 1, did you prepare that Affidavit?

A. No.

Q. Was a draft presented to you by Mr. Newby?

A. Yes.

Q. Did you make any changes to the draft or did you

just sign the first draft?
A. I didn't make any changes.
Q. Did you do any independent research at the Register of Deeds' office to assist you in signing or to prepare you for signing the Affidavit which is Exhibit No. 1?
A. No.
Q. Were any documents provided to you?
A. No.
Q. Was the Ordinance provided to you?
A. No.
Q. Did you have a copy of it in your file somewhere?
A. No.
Q. Did you review the Ordinance?
A. I did later.
Q. After you signed the Affidavit?
A. Right.
Q. Did you review any other ordinances?
A. Yes, the Ordinance and the amendment to it.
Q. Are the opinions that you formed in this case contained exclusively in Exhibit No. 1?
MR. NEWBY: Object to the form.
A. I'm not sure.
Q. Have you formed any opinions or have you been asked to form any opinions other than what's in

Exhibit No. 1?

A. No.

Q. Has anybody asked you to do any more work that has not been completed?

A. No.

Q. Did Mr. Newby ask you whether you knew if that particular ordinance, Ordinance 88-202, was filed with the Register of Deeds' office?

A. Did he ask me if it was filed?

Q. Yes.

A. Before I signed the Affidavit?

Q. I mean --

A. Wait, I'm not sure --

Q. Did you have a conversation with Mr. Newby prior to signing Exhibit No. 1?

A. Yes.

Q. Tell me the substance of that conversation?

A. I just -- he wanted to know if I was familiar with the official map of Horry County that the county uses. And I told him, Yes. And he said, Do you check that map? And I said, Yes. And he said, Would you be willing to sign an affidavit saying that you know of the map? And I said, Yes.

Q. Tell me what the official map of Horry County is?

A. It's the map that the County Council has adopted as their official map.
Q. What is the index map?
A. The index map was an amendment to the official map. And it's 2198, Page 92.
Q. Is that a different --
A. It's an amendment to the official Ordinance.
Q. Let me ask you this. If you're checking title to the property that's involved in this case right now, it's owned by Jericho State Capital, and you run the chain back, would you run across this Ordinance in a search in the Register of Deeds' office?
A. I might not run across it there but it would be picked up in Planning and Zoning.
Q. Have you checked, in this particular case, to see whether anything would be picked up at the Planning and Zoning Department?
A. No.
Q. Your opinions in your Affidavit are not based on anything you suspect the Planning and Zoning Department would have told you had you done a title examination of this particular tract; correct?
A. Say that one more time, please.

Q. The opinions in your Affidavit are not based on a title search that you have done; correct?
A. That's correct.
Q. They're not based on an assumption that had you done a title search and you went to the Planning and Zoning Department and the Planning and Zoning Department would have informed you of Ordinance 88-202; correct?
A. That's correct.
Q. Your knowledge of 88-202 is something that you had independent knowledge of; correct?
A. That's correct.
Q. If you were doing a title examination on the property involved in this case, would you agree with me that you would not pick up Ordinance 88-202 in the chain of title?
A. That's right.
Q. Would you agree with me that if a document is filed with the Register of Deeds' office, no one is going to find it unless it's indexed appropriately; correct?
MR. NEWBY: Objection to form.
A. That's a legal opinion.
Q. It's not a legal opinion. If I file a piece of paper and it says, you know, if I file a piece of

paper and it says Jim Koutrakos conveys to David Turner X property and it's recorded with the Register of Deeds but it's not indexed, so it's not indexed against David Turner, it's not indexed against Jim Koutrakos, someone checking title is not going to be able to find it because it's not indexed; correct?

A. But these are indexed.

Q. I didn't ask you that.

A. In that case, no.

Q. Tell me what's indexed?

A. The ordinances.

Q. How is the ordinance indexed?

A. Out of Horry County and into Horry County.

Q. So when you do a title search, if Horry County is not in the chain of title to a specific piece of property, you're not going to find it; correct?

A. That's correct.

Q. So you wouldn't check Horry County in every title examination, would you?

A. No, with the exception of the Planning and Zoning.

Q. So, would you agree with me then, if you were checking title to this piece of property in the grantor or grantee indices or any other indices,

you would not run across Ordinance 88-202; is that correct?

A. That's correct.

Q. If you were doing a title examination on this piece of property, you would agree with me that you would not run across 88-202 in the Register of Deeds' office; correct?

A. Right.

Q. You wouldn't run across it in the Clerk of Court's office; correct?

A. No.

Q. You wouldn't run across it in the tax assessor's office; correct?

A. No.

Q. Then the question becomes whether the work that you say that you would do by going to the Planning and Zoning Department, you do not know, had you done a title examination of this piece of property, whether the county would have provided you with this information, with 88-202; correct?

A. I'm not following you.

Q. Can you tell me today whether, if you had done a title examination in 2005, 2006, 2007, can you tell me today whether you would have reported Ordinance 88-202 to the attorney who would have

asked you to do this work?

A. Not unless some portion of it may have been conveyed to the county and then I would have to check the county and the chain of title. But no otherwise.

Q. Otherwise you would have never reported it?

A. No.

MR. NEWBY: Jim, can you hold that thought for one second and let me go and answer a question for somebody?

MR. KOUTRAKOS: Not a problem. Go ahead.

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(Thereupon, at 11:15 a.m., a seven-minute recess was had)

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BY MR. KOUTRAKOS:

Q. If you look at Exhibit No. 1, your Affidavit, paragraph number 7, "I have seen the Horry County Ordinance 88-202 filed in the Register of Deeds' record of Horry County on July 9, 2002 in Deed Book 2497 at page 986."

Do you see that?

A. Yes.

Q. Is that something you had seen in your practice

prior to being contacted by Mr. Newby?
A. Correct.
Q. When did you first become familiar with this document filed in July of 2002?
A. I was doing a title examination on a piece of property and part of it was conveyed to the county as a strip, I guess, along the roadway or something like that. So that brought Horry County into the chain of title. So when I was running the county, I ran across one of these Ordinances.
Q. What year did that take place?
A. I don't know. Some years ago. I'm not sure.
Q. Within the past ten years?
A. Maybe a little longer.
Q. And you ran across a bunch of documents, unindexed documents filed by Horry County, indexed only against Horry County; correct?
A. That's correct.
Q. And that would include 88-202 and a bunch of other ordinances; correct?
A. That's correct.
Q. You ran across that by happenstance by finding a conveyance to Horry County; correct?
A. That's right, in the chain I was working on.

Q. But for that one particular transaction, would you have known of 88-202?
A. I knew the ordinances were filed. I might not have known about that particular one.
Q. When you check title in Horry County, do you report the ordinances on record in each and every one of your title reports?
A. If they pertain to the property we are talking about.
Q. How would you know whether they pertain to the property we are talking about?
A. The ordinance pertains to real estate and it sets out the real estate in the ordinance.
Q. It specifically describes the real estate?
A. Yes, or unless it says all real property.
Q. Do you check the ordinances, these unindexed ordinances for each and every title examination that you do?

MR. NEWBY: I'm going to object to the form.

Q. You can answer.
A. I check it through the Planning and Zoning, yes.
Q. If Planning and Zoning refers you to the ordinance, you don't report it; correct?
A. If it falls within the bounds of the ordinance

pertaining to that property, yes, I would I report it.

Q. So when you report an ordinance, it's not through your search in Register of Deeds, it's your independent search through Planning and Zoning; correct?

A. Correct. Unless the county is in the chain of title.

Q. Unless the county is in the chain of title?

A. Right.

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(Thereupon, Exhibit No. 2 was marked)

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Q. I'm showing you what's been marked as Exhibit No. 2 (handing). This is directly from your file. Remember I subpoenaed your file a year or so ago?

A. Okay.

Q. Do you remember that?

A. Yes.

Q. So this came directly from your file. Can you show me on Exhibit No. 2, well, Exhibit No. 2 is 88-202, Ordinance 88-202?

A. Yes, it looks like it.

Q. And that's the Ordinance referenced in paragraph

number 7 in your Affidavit, Exhibit No. 1; correct?

A. Yes.

Q. Can you show me on Exhibit No. 2 where the property that's involved in this case is located?

A. I mean, I didn't do the title examination on this property so I don't really know.

Q. Are there any tax map numbers listed on this? On the attachments. And I'm referring to the attachments to Exhibit No. 2, the maps that are attached.

A. Yes, that's what I'm looking at. I don't see any attachment.

Q. Let's look at the third page. Well, first of all, let's go to the second page of the exhibit. Do you see where it is -- is it notarized at all?

A. Yes.

Q. Where is it notarized?

A. No, I see that it isn't.

Q. Is it witnessed?

A. No.

Q. Going to the third page of Exhibit No. 2, it's a map of something. Can you tell me where this property is located?

A. There again, I haven't done any research on the

property so I wouldn't know.

Q. I'm just asking if you are looking at 88-202, can you discern from looking at Exhibit No. 2, what properties are affected by 88-202 by looking at the maps attached to it?

A. Yeah. I mean, there are definite parcels shown on the maps.

Q. Well, let's look at the third page. How would you go about finding which property is affected here, would you look for a TMS number?

A. I would think it would be the shaded area. There again, I haven't studied this because I didn't do the title examination.

Q. You can't tell me by looking at this today what specific property is affected by 88-202, Exhibit No. 2?

MR. NEWBY: Object to form.

A. You can tell where some of the parcels are but not, I don't know where all of them are. I can't do everything.

Q. From looking at 88-202, Ordinance 88-202, Exhibit No. 2, can you give me one specific tax number that is affected by Ordinance 88-202?

A. No.

Q. Can you give me the name of any owners who were

affected by 88-202, Exhibit No. 2?

A. There is a Socastee Recreation Center listed.

Q. Does it say the Socastee Recreation Center is the owner?

A. It's just shown on the map. That's all.

Q. You can not find the name of an owner affected on Exhibit No. 2, Ordinance 88-202; correct?

A. No, other than the Socastee Recreation Center.

Q. And we don't know if that's the name of the owner, that might be what it's called; correct?

A. Correct.

Q. Have you checked to see how this document, I think we talked about this but I want to be specific, as to Exhibit No. 2, Ordinance 88-202, how this document is indexed in the grantor and grantee indices?

A. Under Horry County.

Q. So the grantor would be Horry County?

A. Right. Maybe Horry County by politic. It may be Horry County Council, that kind of thing, but it's Horry County.

Q. Have you been on that wonderful web page called the Horry County ROD web page?

A. Yes.

Q. They don't let you pull the occupants, do they?

A. Yes, if you have an account there.
Q. You have an account there?
A. Yeah.
Q. Good bless you. 50 cents a page to view it; is that right?
A. You could view it with the bars on it, the black bars, and you could kind of get an idea whether you want to pay for it or not.
Q. Let me show you -- I may or may not make this an exhibit. Are you familiar with this piece of paper that I'm showing you (handing)?
MR. NEWBY: Did you say this is or is not an exhibit?
MR. KOUTRAKOS: If he's familiar with it, I'm going to make it an exhibit.
A. This is probably --
Q. Let me point out I don't have the subscription you have. This is what's available to public nonpaying members.
A. I think this is as a result of if you find it on the index and you double click it, it opens up to this window.
Q. From looking at this, does it appear that it's indexed as grantor, Horry County Council?
Let me back up. You see where it says

Book 2497 on Page 986?
A. Yes.
Q. That is Exhibit No. 2; correct?
A. That's correct.
Q. And you see it's indexed in it looks like the Deed Book; right?
A. Yes.
Q. And then it says the record date, July 9, 2002, which is consistent with Exhibit No. 2?
A. Right.
Q. And then the book and page; correct?
A. Right.
Q. And it says, Memo: Ordinance 88-02. Perhaps it should say 202.
A. 202 is what it should say, yeah.
Q. Then it says grantor and grantee. Do you see that?
A. Yes.
Q. By looking at this, if it was indexed any other way besides Horry County Council, it would most likely mention it on this printout; correct?
A. Yes.
Q. As far as you know, it's only indexed under the grantor/grantee indices as Horry County Council?
A. Right, it doesn't say anything else there.

MR. KOUTRAKOS: Let's make this Exhibit 3.

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(Thereupon, Exhibit No. 3 was marked)

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Q. Going back to Exhibit No. 2, the Ordinance. Are we looking at the same thing here? Right here. Exhibit No. 2. It's the same thing, isn't it?

A. Yeah.

Q. Exhibit No. 2, is that a condemnation notice?

A. No. There again, you're calling for a legal opinion.

Q. But if you reported it, if one of your attorneys asked you to do a report and you ran across this somehow, would you report it as a condemnation or would you report it on your section called other, you need to take a look at this, which one would you report it under?

A. Under the "other."

Q. You need to take a look at it?

A. Right.

Q. If it was a condemnation action, there would have been a transfer of title at some point in time; correct?

A. That's correct.
Q. And perhaps your end result would have said property -- either the condemnation action would have been in the chain of title; correct?
A. Yes.
Q. Or if there was a condemnation against the current owner, you would say owner of property. X --

MR. NEWBY: Objection.

MR. KOUTRAKOS: I'm not done asking the question.

Q. X, plus South Carolina Department of Transportation, whoever condemned it; correct?

MR. NEWBY: Objection to the form of the question.

A. Correct.
Q. Paragraph 8 of your Affidavit, which is Exhibit No. 1, where you say, quote, "I have examined the index map of the official map in the past in my role as a title examiner and am aware that it provides notice of the specific location of roadway acquisitions for current and future roadway improvements within Horry County," period, close quote.

Do you see that?

A. Yes.
Q. The map shows where the road is going to be; correct, attached to the Ordinance?
A. Yes.
Q. But you can't tell from the map who is affected by it, the map to Exhibit No. 2?
A. Yes, because it's in bad condition.
Q. Even if it was in good condition, you don't see any --
A. You don't see TMS numbers.
Q. And just generally speaking, this might be common sense, but normally if you see a map and you see the intersection of Main Street and Elm Street, you kind of can figure it out; right?
A. That's right.
Q. Because Main Street is there and Elm Street is there and you can find it; right?
A. Right.
Q. But I was just thinking while I was asking you the question, if Main Street is not there yet, it's kind of difficult to tell where the property is; right?
A. Well, on the official map it's dotted in, any proposed roadway and things like that.
Q. I saw some intersections there.

A. Right.
Q. But I couldn't tell, it's hard to tell where exactly the road is going to be on the intersection, would you agree with me?
A. Yes.
Q. Paragraph number 9 you were just basically restating what's in the Ordinance; is that right?
A. That's right.
Q. Paragraph number 10, the first part of the sentence says, "The Ordinance recorded in the real estate records, and the index map of the official map are parts of the public records of Horry County, South Carolina and are freely accessible by both the general public and title examiners." Did I read that correctly?
A. That's right.
Q. It's recorded in the Register of Deeds but it can only be found if you really know about it; correct?
MR. NEWBY: Object to the form.
Q. Let me back up a little bit. When you say, "parts of the public records of Horry County," what are you referring to?
A. They're included in the public records.
Q. Where?

A. In the Register of Deeds.
Q. Are you referring to anything else other than the Register of Deeds?
A. In the deed index. No.
Q. This document, a title examiner would not find it unless Ordinance 88-202, a title examiner would not find it unless Horry County Council was in the chain of title; correct?
A. Or they went to Planning and Zoning and they asked for the M&M and they notified you of it.
Q. With respect to the Register of Deeds, you couldn't find it unless Horry County Council is in the chain of title; correct?
A. That's correct.
Q. So when you say it's freely accessible by the general public and title examiners, it's freely accessible if insofar as you could plug in 88-202 in a computer and you could pull it up and you could read it; correct?
A. No, you can't pull it up that way.
Q. Deed and Book page?
A. Right.
Q. You pull up the Deed and Book page?
A. Right.
Q. And you pop it up?

A. Right.
Q. So if you had that and you had independent knowledge before you went to the courthouse to the Register of Deeds' office, you could freely access it and pull it up; correct?
A. Right.
Q. Otherwise, if you didn't know about it and Horry County Council is not in your chain of title, you're not going to run across it; correct?
A. Right. But if you knew about it, you could come and check the indices under Horry County Council.
Q. And you knew about it; right?
A. Right.
Q. What did you do to prepare for today's deposition?
A. I just looked at the 107-98 Ordinance and 153-99.
Q. Let's mark 153-99 as the next exhibit which would be 4, I believe. Again, this came from your file.

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(Thereupon, Exhibit No. 4 was marked)

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Q. This is Ordinance 153-99. You referred to it once or twice in this deposition. Tell me what

that is?

A. It's providing for the adoption of an official map for the unincorporated sections of Horry County.

Q. I subpoenaed your file and you gave me your Affidavit, you gave me 88-202, and you gave me 153-99. How did those get in your file, did you go and copy them at the Register of Deeds' office?

A. That's not in my Affidavit, is it?

Q. It's not referenced in your Affidavit but it was part of the documents that you produced to me when I subpoenaed your file.

A. No, I didn't.

Q. Did somebody provide them to you?

A. I don't know. Fred may have had his title examiner copy them and send them to me, I'm not sure.

Q. But you didn't pull these documents up independently from the Register of Deeds' office?

A. I looked at them again this morning before I came over.

Q. But you didn't go to the Register of Deeds' office and pull them yourself?

A. Yes. I mean, I looked at them from there, at the

Register of Deeds.

Q. You were at the Register of Deeds and you pulled them up and read them?

A. Yes.

Q. Okay. Were you familiar with 153-99 before being contacted by Mr. Newby's office, Exhibit No. 4?

A. No.

Q. The next thing is, this should be the last of my exhibits, Exhibit No. 5. This is the last document that was contained in your file.

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(Thereupon, Exhibit No. 5 was marked)

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Q. Exhibit No. 5 is Ordinance 107-98. Were you familiar with Ordinance number 107-98 before being contacted by Mr. Newby's office?

A. This is the one for the official map. Yes, I knew about that.

Q. You're familiar with 107-98 but you weren't familiar with 153-99?

A. I don't know.

Q. Do you have a file in your office called Horry County Ordinances?

A. I have a --

Q. Or the official map in your office?
A. No. No.
Q. I'm just trying to find out how these three ordinances, 4, 5 and 2, Exhibit No. 2; is that right? Hold on a second.
MR. NEWBY: You did make this Exhibit No. 5?
MR. KOUTRAKOS: Yes, that's 5. 107-98 is 5. Did I give you 153-99?
MR. NEWBY: 153-99 is 4.
MR. KOUTRAKOS: Did I give you a copy of that?
MR. NEWBY: Yes.
MR. KOUTRAKOS: Okay, that's 4.
MR. NEWBY: 3 was this thing (indicating).
BY MR. KOUTRAKOS:
Q. This is something else that was in your file. It's confusing to me. It doesn't make any sense, but let's make this Exhibit No. 6.
Just so you know, number 6 appears to be the same exact thing as number 4, as far as I can tell, but different Book and Page number.

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(Thereupon, Exhibit No. 6

was marked)

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MR. KOUTRAKOS: Exhibit No. 6 and Exhibit No. 4 appear to be the same thing. Exhibit number 4 was recorded October 7, 1999, and it looks like -- let me back up.

Exhibit No. 4 was recorded October 7, 1999. Exhibit No. 4 is Ordinance 153-99. Exhibit No. 6 is also 153-99. Exhibit No. 6 looks like it was recorded October 14, 1999.

MR. NEWBY: I see the difference.

MR. KOUTRAKOS: What's the difference?

MR. NEWBY: Exhibit No. 4, which was apparently recorded first, does not have James Frazier's signature and the other one does. Exhibit No. 6 has James Frazier's signature.

MR. KOUTRAKOS: Okay, I see that. Maybe that's why it was rerecorded. Okay.

BY MR. KOUTRAKOS:

Q. 2, 4, 5 and 6 are ordinances in your file. The question is, did you have copies of those ordinances in your office or were they provided to you by Mr. Newby?

A. No, neither.

Q. I subpoenaed your file and you gave me these. I

didn't have them independently.
A. Yeah.
Q. Well, I had Exhibit No. 2 independently but Mr. Newby provided it to me when he sued my client. But other than that, how did those documents come to be in your file?
A. I guess through Mr. Newby's office.
Q. So you did not have a file in your office containing these ordinances?
A. No.
Q. You did when Mr. Newby gave it to you, which would have been the file I subpoenaed from you, if that makes any sense?
A. Say that again.
Q. I asked you if these ordinances were in a file that you had in your office?
A. No.
Q. But they are because they went into this file that I subpoenaed; right?
A. Okay.
Q. Is that right?
A. Yes.
Q. And they came from Mr. Newby's office; correct?
A. I assume.
Q. Is that right?

A. I assume.
Q. You don't have any specific recollection of having any file or any of these ordinances laying around in your office?
A. No.
Q. This morning you said you went to the Register of Deeds' office?
A. (Witness nods head.)
Q. Did you do anything other than just pull the ordinances to review them again?
A. That's all.
Q. Do you even know the identity of the property that's involved in this case?
A. No.
Q. Do you even know where it's located?
A. No.
Q. When you say --
A. I mean, I have got an idea.
Q. The index map of the official map, there is a little confusion on my part.
A. Mine too. That's the County Council's wording.
Q. Index map doesn't mean, and you're an abstractor and I have been to the courthouse and I've learned, I don't have as much training clearly as you have but I can check titles. But the first

thing that comes to my mind is index.

A. Right.

Q. There is some index that you could look at. As far as you know, the index map doesn't contain an index; correct?

A. That's correct.

Q. As far as you know, all the ordinances that are exhibits today, I believe it's 2, 4, 5 and 6, they're indexed in the same manner, Horry County Council as grantor, Horry County Council as Grantee?

A. Correct. Or one or the other, Horry County Politic, I'm not sure.

Q. Some entity that begins with Horry County?

A. Correct.

Q. Your job as the abstractor is to find documents that are relevant and give it to somebody to interpret; correct?

A. Right.

Q. You're not an attorney; correct?

A. Correct.

Q. Do you have any legal training other than being an abstractor which some people might call legal training?

A. No.

Q. From your training, you know that a deed changes title; correct?
A. Yes.
Q. A mortgage encumbers title?
A. Right.
Q. A judgement encumbers title, it's a lien on the title; right?
A. Yes.
Q. Although you have no legal training, those things you need to know in order to do your job as an abstractor; correct?
A. Correct.
Q. Exhibit No. 2, which is Ordinance 88-202, does that transfer title?
A. No.
Q. Exhibit No. 2, that's Ordinance 88-202, right?
A. I think it is, yes.
Q. Let me take a break and I think I'm done.

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(Thereupon, at 11:50 a.m., a sixteen-minute recess was had)

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BY MR. KOUTRAKOS:
Q. Mr. Turner, I just want to clarify two things. When you go to the Planning and Zoning Department

and you give them the information regarding the parcel, do they give you a document back or is it all verbal?

A. No, it's verbal. I thought about that I might need to do that.

Q. But it's just verbal?

A. Yes, it is verbal.

Q. So you write notes down?

A. Right.

Q. Going back to the property involved in this case which you don't know much about, is it fair to say but for anything the Planning and Zoning Department gives you, unless Horry County was in the chain of title, you would not run across any of the ordinances that are exhibits in your deposition today; correct?

A. That's correct.

Q. That's all the questions I have.

EXAMINATION

BY MR. NEWBY:

Q. I'm going to try to be brief but I do have a few questions, David.

If I heard you right, you started doing title work in Horry County in 1962?

A. That's correct.

Q. So that would be 52 years now?
A. Yes.
Q. And you have done that continuously for 52 years?
A. Yes.
Q. Has there ever been a period of time, a year or more, where you had other jobs or did something other than title examinations in Horry County?
A. In the summer I worked in the amusement park for seven years as night. That was after 5:00.
Q. That was when you were in high school and beyond?
A. Yes.
Q. How about after those seven years?
A. No, that's all I did.
Q. Now, when you do a title exam, do you look at plats and surveys?
A. Yes.
Q. Do you have a general knowledge of how other title examiners in Horry County do their work?
A. I mean, I don't know. I don't check with them.
Q. Let me ask you this. Is it common for title examiners other than yourself to check maps and plats?
A. Yes.
Q. Would that be a normal part of a title exam?
A. I would think, yes.

Q. And when you check a piece of property that you are doing a title exam on, and you have looked at the maps and plats, do you then know where it is?
A. Yes, pretty much.
Q. If you're doing a title exam that was on the Intracoastal Waterway, would that fact come to your knowledge as you did the title exam?
A. The fact being?
Q. That it was adjacent to the Waterway.
A. Yes.
Q. It would be hard to miss that fact, would it not?
A. Yes.
Q. Look at Exhibit 2, which is the Ordinance 88-202 or 02, depending on which document you look at.
A. Okay.
Q. And look at the maps. I'm going to refer you to, well, you could barely read it, but it's sheet 10. There is a little thing at the bottom right of each one that has a sheet number. It's actually 11, it looks like, now that I see the one that's after it is 12. Yeah, sheet 11.
A. Okay.
Q. If you will hold that and look at it so that the writing at the bottom is correct, so that it's right side up. You see that big dark area in the

middle?
A. Yes.
Q. Now, I want you to turn it up so that what is at the right-hand side is at the top.
A. Okay.
Q. And look to the left at this little swath that runs right through the middle and see if you could read those words right there. What does it say?
A. Intracoastal Waterway.
Q. So anybody looking at this Ordinance and this set of maps would see that this roadway, one way or the other, crosses the Intracoastal Waterway at that location, would that be accurate?
A. Yes.
Q. If you were checking property that was at this location on the Intracoastal Waterway, would that be relevant?
A. Yes.
Q. Would you report that if you found that?
A. Yes.
Q. While it doesn't have all the street names and, of course, you could barely read this thing anyway, you can read Intracoastal Waterway even on this crummy copy; is that right?

A. Yes.
Q. Is there any question in your mind where Ordinance 88-202 was recorded?
A. No.
Q. Is there a stamp on the front upper right-hand corner of the first page of that exhibit?
A. Yes.
Q. What's the date of the recording, if you could read it?
A. It's July 9th two thousand, I don't know if that's two.
Q. I believe it is.
A. I think it's 2002.
Q. What date was it signed on the second page?
A. July 2, 2002.
Q. That stamp has three letters at the bottom. It says RMC; is that correct?
A. Yes.
Q. What does that mean?
A. It means Register Mesne Conveyance.
Q. What is that office called now?
A. Register of Deeds.
Q. Was it in fact the Register of Deeds then but just under a different name?
A. Yes.

Q. Were things other than deeds recorded in the Register of Deeds' office?
A. Yes.
Q. Are leases recorded there?
A. Yes.
Q. Are easements recorded there?
A. Yes.
Q. Are memorandum of leases recorded there?
A. Yes.
Q. So things other than deeds can be found in the Register of Deeds?
A. Correct.
Q. Are County Council ordinances recorded there?
A. Yes.
Q. And, in fact, does it appear that this one was?
A. Yes.
Q. Is there any question in your mind that the documents recorded in the Register of Deeds are part of the public record?

MR. KOUTRAKOS: Object to the form.

Q. You can answer that.
A. No, there is no -- I agree it is.
Q. On the side of this Exhibit 2 you will see Deed and then there are some numbers. What does all that mean?

A. Deed Book and Page where the document is recorded in the Register of Deeds.
Q. What is the Deed Book that this is recorded?
A. 2497.
Q. Are the Deed Books part of the public record?
A. Yes.
Q. To your knowledge, has anybody in the public ever been denied access to a Deed Book if they ask for it?
A. No.
Q. Are you familiar with the state law that's referenced in the first Whereas clause of Exhibit 2, the state law that authorizes the filing of an official map?
A. Not really.
Q. But it does say that this is pursuant to that; is that right?
A. That's correct.
Q. And whatever that state law says would be relevant, in your opinion, or would it not be relevant?
A. Yes.
Q. Yes, it would be?
A. Yes.
Q. Now, there were questions asked of your Affidavit

that was Exhibit 1. Have you reread your Affidavit in preparation for this deposition?

A. Yes.

Q. You have now been asked to look at certain sections of this Affidavit during your deposition today; is that right?

A. Yes.

Q. Is there anything that's in your Affidavit, Plaintiff's Exhibit 1, that today, upon reflection and upon examination, that you would say was untruthful when you signed it?

A. No.

Q. Is there anything that you think is untrue today?

A. No.

Q. I believe you testified that you go to Planning and Zoning and check with maps and see what they have on record?

A. Yes.

Q. Where is the mapping office in Horry County, what office is it a division of?

A. You're referring to the Planning and Zoning that I check with?

Q. No, not Planning and Zoning. Is there another mapping office?

A. Yes, the tax assessor's office. The mapping

department.

Q. Can you look up mapping questions at the assessor's office?

A. Yes, with assistance. They won't let you go back there and actually look at the book.

Q. But if you ask them, they will help you?

A. Yes.

Q. If you as a title examiner or me as a member of the public asks to see a map of a certain TMS number, in your experience, would the people at the assessor's office take you back and look up the map?

A. Yes.

Q. Would they make you copies of the map if you ask for it?

A. Yes.

Q. Let me show you this document (handing). What does that appear to you to be?

A. It looks like an aerial photo.

Q. Of what?

A. Of a piece of property along the Waterway.

Q. What title does it have at the top of the document?

A. Carolina Bays Parkway Right-Of-Way Map.

Q. The roadway that we have been discussing today

that this lawsuit relates to, do you know what name that road has?

A. I'm not familiar with the property. I mean, if you're saying this is it then I guess they're talking about the right-of-way map. This would be it, the Carolina Bays Right-Of-Way.

Q. I'll represent to you that that aerial photo that you just identified, the area in green is the property we are talking about.

A. Okay.

MR. NEWBY: I'm going to go ahead and mark that even though I only have a black and white copy. I'm going to make that as an exhibit.

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(Thereupon, Exhibit No. 7 was marked)

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MR. NEWBY: The reporter has just marked this color aerial photo as Exhibit No. 7 for this deposition. And by agreement of counsel I'm going to make another photocopy of this and substitute the copy for the original in the deposition record.

Jim, is that okay?

MR. KOUTRAKOS: Yes, sir.

BY MR. NEWBY:

Q. You mentioned spoilage as it pertaining to the Intracoastal Waterway. Why is that important? What is spoilage?

A. That's the dumping of conglomerate that they dig out in the Intracoastal Waterway onto the property if it's in the spoil area.

Q. Is that property that's in the spoil area generally privately owned?

A. Yes.

Q. It's not within the boundaries of the Waterway itself, is it?

A. No.

Q. If you were checking property that is adjacent to the Intracoastal Waterway, are you familiar with the fact that spoilage areas may become an issue?

A. Yes.

Q. Would you say that title examiners doing work regularly in Horry County are familiar with that fact?

A. Yes.

Q. Are you familiar with whether or not title examiners in Horry County generally would be checking for spoilage easements on property

adjacent to the waterway?

A. Yes.

Q. Would that generally take them to the mapping office?

MR. KOUTRAKOS: Object to form.

Q. You can answer.

A. Yes.

Q. There was a question asked of whether Ordinance 88-202, which is now Exhibit 2 of this deposition, was notarized. Whether it was notarized or wasn't notarized, is it still in Deed Book 2497 on Page 986?

A. Yes.

Q. What's the typical time frame during which title examiners are asked to check title?

A. You mean how long does it take normally?

Q. No, how far back in the chain do you go?

A. I think mostly 40 years. And then the attorneys tell us that if they have to get title insurance, they get 60 years.

Q. Now that you and I have lived more than 60 years, it doesn't seem so long ago, but that would take us back to the 1950s; is that correct?

A. That's right.

Q. When was the Waterway built?

A. 1931.
Q. And is that approximately when the spoilage easement came into effect?
A. Yes.
Q. So when it comes to matters of that nature, would it be common to go back beyond the 50 years to check on something that was actually created in the 1930s, in his case spoilage easements?
A. Yes, if need be.
Q. Unless you've checked the U.S. Government, United States of America, or you happen to know who owned the land in the 1930s, would a title examiner necessarily find the spoilage easement in the chain of title in a 40- or 60-year search?
MR. KOUTRAKOS: Object to form.
Q. Indexed by name, let me add that to the question. Would it be indexed by name in a 40- or 60-year search?
A. Yes. That might be further back than 60 years. So, no, you wouldn't find it if you only did 60.
MR. NEWBY: No further questions.

REEXAMINATION

BY MR. KOUTRAKOS:
Q. Mr. Turner, Exhibit No. 7, is there a date on that exhibit?

A. It looks like December 2, 2011.
Q. If you were doing a title search in 2007, can you tell me, do you have a belief as to whether you would find a document created in 2011, whether you would find it in your title search?
A. Ask that again, please.
Q. If you were checking a title in 2007 to this particular piece of property as shown in Exhibit No. 7, can you tell me today whether you would have run across, in your examination, this document, Exhibit No. 7, which appears to be dated December 2, 2011?
A. No, if I did the title examination in '07.
Q. You wouldn't find it?
A. No.
Q. You were asked about memorandum of leases and easements and other things that are recorded in the Register of Deeds by Mr. Newby.
A. Correct.
Q. A memorandum of lease would be indexed under the name of the lessor and lessee; correct?
A. Yes.
Q. An easement would be indexed similar to a deed and they would have a grantor and a grantee; correct?

A. That's right.
Q. And whatever other documents he asked you about, I can't remember, but all those documents would be indexed in the name of somebody?
A. Yes.
Q. Not the name, like we have the Ordinances under only Horry County Council; correct?
A. That's correct.
Q. Do you check the 911 records for a particular piece of property?
A. No.
Q. Do you check to see what kind of fire district it's in?
A. Not to state the kind of fire distract it's in to report that to the attorney, but that's checked when I go to the Planning and Zoning and have them to check on the official map if there is any special fire district or something that's pending or that just came up.
Q. Are you responsible for checking in federal court records?
A. No.
Q. Why not?
A. Because it's not here and accessible to us.
Q. Is a federal court record a public record?

A. I don't know.
Q. Do you have any reason to believe that a federal court record is not a public record?
A. I don't know.
Q. Do you check with the South Carolina Department of Transportation records in Columbia when doing a title examination?
A. Not unless I run across a document that relates to them.
Q. When you check on a specific piece of property and you see it's bordered by a public highway, do you check, as a matter of course, the records at the South Carolina Department of Transportation?
A. Usually I find, back in the chain, a conveyance to the Highway Department for that right-of-way area. But, if I don't, then I could check with the Highway Department.
Q. But do you, as a matter of course, believe you're responsible for checking the records in Columbia?
A. On a regular basis, no.
Q. Not on a regular basis. As a title abstractor, do you think your duties extend to check the SCDOT records in Columbia?
A. No.
Q. Do you think your duties as title examiner, your

duties also include checking federal court records?

A. No, we don't have access.

Q. As part of your duties as a title examiner, do you provide zoning certifications to attorneys?

A. I don't certify anything.

Q. You certify the accuracy of your title search; correct?

A. I certify the accuracy.

Q. But you don't certify any zoning information you give, do you?

A. No.

Q. Don't attorneys actually obtain separately zoning letters?

A. I would think so.

Q. Do you know what a zoning letter is?

A. Yes.

Q. That's the attorney's responsibility; correct?

A. Right.

Q. That's not your responsibility as an abstractor?

A. No.

Q. You were asked numerous times whether Exhibit 2 is recorded in the Register of Deeds. You said in your Affidavit it's recorded in Deed Book 2497 on Page 986. The question I have for you is, you

have already testified that it was not indexed in any other way except against Horry County; correct?

A. That's correct.

Q. That's all the questions I have.

MR. NEWBY: Nothing further.

THE COURT REPORTER: Is everybody ordering copies?

MR. NEWBY: Yeah, we'll take a copy.

MR. KOUTRAKOS: Yes, please.

- - - - -

(Time noted: 12:29 p.m.)

- - - - -

STATE OF SOUTH CAROLINA :
: CERTIFICATE
COUNTY OF HORRY :

I, Rita Rodriguez, a Notary Public for South Carolina, do hereby certify that the within named witness, DAVID C. TURNER, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid:

That the testimony then given was reduced by me to stenotype in the presence of said witness, subsequently transcribed onto a computer under my direction, and that the foregoing is a true and correct transcript of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel or attorney of either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Myrtle Beach, South Carolina this 25th day of July, 2014.

_____

RITA RODRIGUEZ, Notary Public
for South Carolina.

My Commission expires October 4, 2015.

- - - - -

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF DAVID C. TURNER
COUNTY OF HORRY)

Personally appeared before me, David Carlisle Turner, who first being duly sworn deposes and states that:

1. That I, David Carlisle Tuner, am a citizen and resident of Horry County, South Carolina.

2. That I am the owner of a business engaged full time in performing real estate title examinations in Horry County, South Carolina.

3. That I have been examining real estate titles in Horry County, South Carolina for 49 years, having started that work in 1962 while still a student in High School.

4. That I am intimately familiar with the public records of Horry County, South Carolina as they relate to real estate titles.

5. That I am familiar with the records recorded in the Horry County Register of Deeds.

6. That I am familiar with the Index Map for the Official Map, and the Official Map itself.

7. I have seen the Horry County Ordinance 88-202 filed in the Register of Deeds' records of Horry County on July 9, 2002 in Deed Book 2497 at page 986, and the Index Map of the Official Map which is referred to in that Ordinance, which map depicts the approved location of Highway 31 (Carolina Bays Parkway).

8. I have examined the Index Map of the Official Map in the past in my role as a title examiner and am aware that it provides notice of the specific location of roadway acquisitions for current and future roadway improvements within Horry County.

9. The Ordinance states that the purpose of its passage, and its recording in the records of the Register of Deeds is to "allow[] the location of current and future roadway improvements to be identified ..." and further states that the amendment is needed because the Index Map " . . . does not include the property upon which the construction of the Carolina Bays Parkway from Highway 501 to Highway 17 By-pass will occur. . ." [emphasis added].

10. The Ordinance recorded in the real estate records, and the Index Map of the Official Map are parts of the public records of Horry County, South Carolina and are freely accessible by both the general public and title examiners.

EXHIBIT
1
7-14-14

11. The undersigned deponent being duly sworn on oath does hereby state that the aforesaid facts are true and correct to the best of his knowledge.

BY: David Carlisle Turner
David Carlisle Turner

Sworn to before me this
12th Day of December, 2011

Notary Public for South Carolina
My Commission Expires 3/2/14 (Seal)

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE NO. 88288

FILED
HORRY COUNTY
JUL -9 PM 12:27
R.M.C.

AN ORDINANCE TO AMEND THE INDEX MAP OF THE OFFICIAL MAP ORDINANCE FOR HORRY COUNTY ADDING THE RIGHT-OF-WAY FOR THE CAROLINA BAYS PARKWAY FROM HIGHWAY 501 TO HIGHWAY 17 BY-PASS.

WHEREAS, Title 6, Chapter 7, Sections 1210 through 1280 of the Code of Laws of the State South Carolina, as amended, authorizes local governments to adopt an Official Map Ordinance for their jurisdictions; and

WHEREAS, the Horry County Council under such authority adopted Ordinance 107-98 creating an Official Map for Horry County; and

WHEREAS, the Horry County Council established an Index Map for the Official Map (Ordinance 153-99) which provides for the specific location of current and future roadway improvements within the county; and

WHEREAS, the establishment of such map allows the location of current and future roadway improvements to be identified and provides opportunities for Horry County or other governmental entities to purchase such properties prior to issuance of building permits or granting of rezoning approvals as a means of reducing acquisition costs; and

WHEREAS, the Index Map does not include the property upon which the construction of the Carolina Bays Parkway from Highway 501 to Highway 17 By-pass will occur; and

WHEREAS, adding this property to the Index Map is in the public interest since it provides an alternative north/south route of travel for residents and tourists as well as provides opportunities to reduce future acquisition cost by limiting development in the path of such improvements.

NOW THEREFORE by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained that:

DEED 2497 0986

1) **Amendment of the Index Map of the Official Map Ordinance, Ordinance 153-99:**

The Index Map of the Official Map Ordinance (Ordinance 153-99) shall be amended as follows:

Addition of the right-of-way identified as Alternative 1 for the proposed Carolina Bays Parkway from Highway 501 to Highway 17 By-pass as shown in the document entitled "Carolina Bays Parkway, Phase V FEIS Conceptual Roadway Plans", dated May 1998 prepared by the LPA Group of Columbia, South Carolina, attached hereto and incorporated herein by reference.

2) Severability: If a Section, Sub-section or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that

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Section, Sub-section or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

3) Conflict with Preceding Ordinances: If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

4) Effective Date: This ordinance shall become effective on third reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 2nd day of July, 2002

HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Skidmore Jr., District 1 — John Kost, District 2 — District 3

Michael L. Ryan, District, 4 — Terry B. Cooper, District 5 — Gene R. Smith, Jr., District 6

James R. Frazier, District 7 — Elizabeth Gilland, District 8 — W. Paul Prince, District 9

Kevin J. Hardee, District 10 — Janice Jordan, District 11

ATTEST:

Patricia S. Hartley, Clerk to Council

FIRST READING: May 7, 2002
SECOND READING: June 18, 2002
THIRD READING: July 2, 2002

Official Map Addition - CBP (501 to Hwy 17 Bypass)

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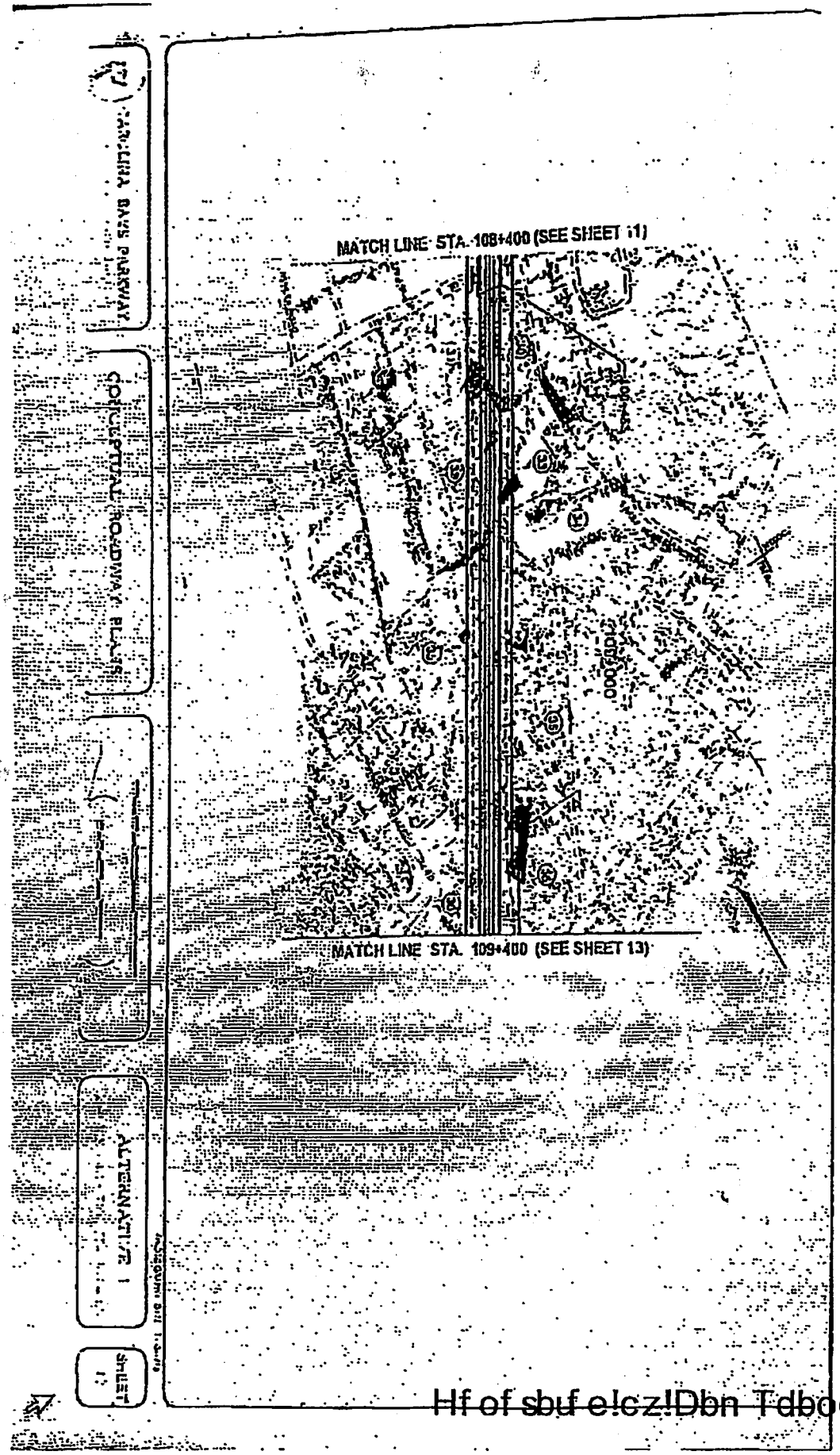
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CAROLINA BAYS PARKWAY

CONCEPTUAL ROADWAY PLANS

ALTERNATIVE 1

SHEET

MATCH LINE STA. 115+600 (SEE SHEET 17)

MATCH LINE (SEE SHEET 19)

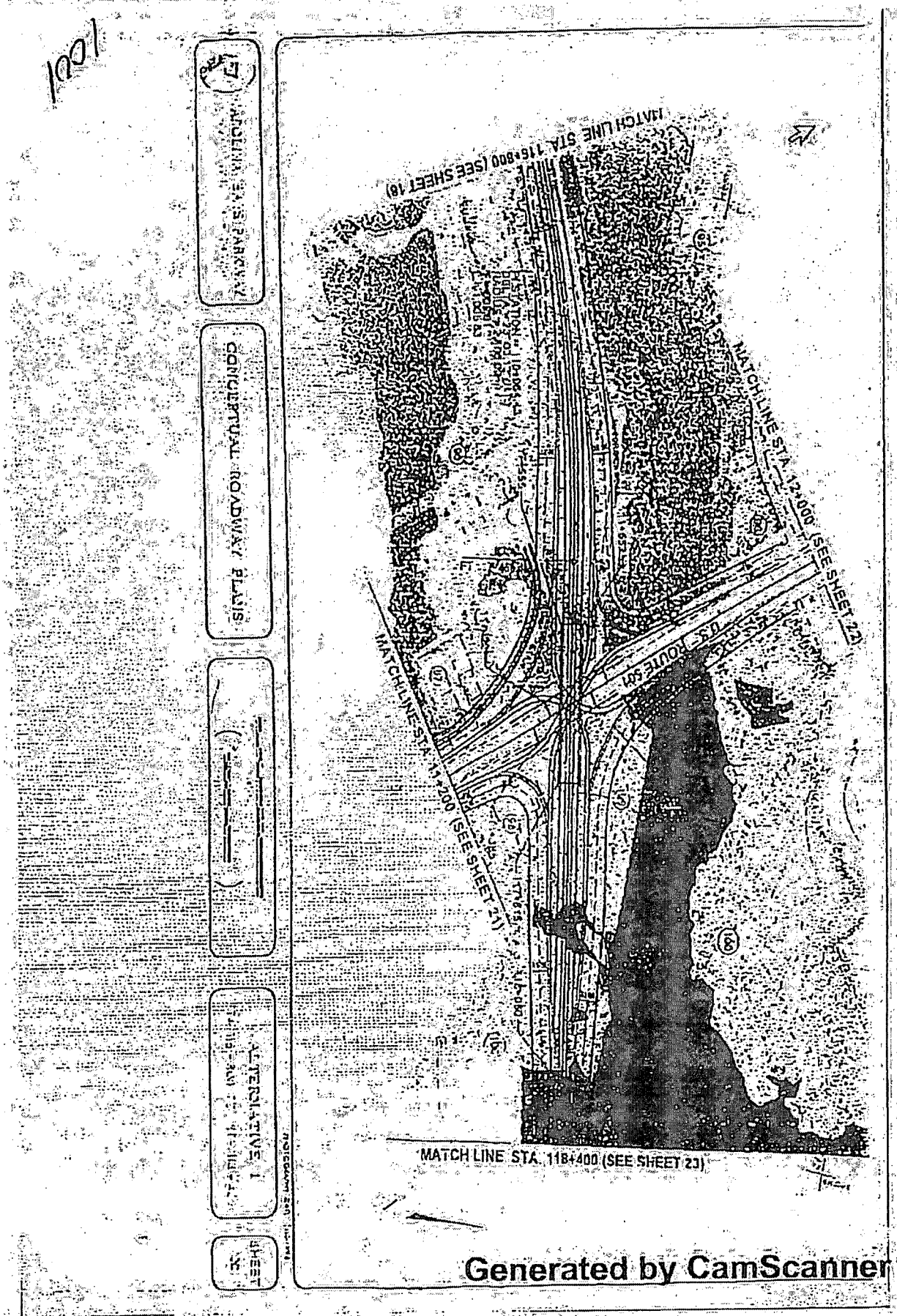
MATCH LINE STA. 116+600 (SEE SHEET 20)

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Horry County

Horry County, South Carolina OnCore Web Public Search v4.3.0.0

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Instrument # ‹ Prev 2002100023015 Next ›

Document Navigation by Pages:
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Booktype: D

Book: 2497 Page: 986

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Acknowledgement Date:	7/9/2002
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GRANTEE:	HORRY COUNTY COUNCIL ()
Book Type:	D
Book / Page:	2497 / 986
# of Pages:	16
MEMO	ORDINANCE 88-02

Note: Empty fields are not shown
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EXHIBIT 3 7-14-14

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE NO. 152-99

R.M.C.

AN ORDINANCE PROVIDING FOR THE ADOPTION OF AN OFFICIAL MAP FOR THE UNICORPORATED SECTIONS OF HORRY COUNTY.

Whereas, Title 6. Chapter 7, Code of Laws of South Carolina 1976 as amended, authorizes counties to prepare and adopt an Official Map, and

Whereas, Horry County Council developed and adopted Ordinance # 107-98 allowing an Official Map to be created for the purpose of promoting and preserving the public health, safety, and welfare in Horry County, and

Whereas, one purpose of the Official Map is to designate and preserve future locations of streets and highways, and

Whereas, the Carolina Bays Parkway and Conway By-Pass are two important roadways that are needed in Horry County to promote and preserve the public safety, economy, prosperity, and general welfare, and

Whereas, the Horry County Planning Commission has reviewed the plans for the Carolina Bays Parkway and Conway By-Pass and recommends that their locations be shown on an Official Map,

NOW, THEREFORE BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA:

Ordinance 107-98 is amended as follows:

Section 1. The attached map shall be adopted as the Index Map for the Official Map. The index map shows the proposed right-of-way alignment for the Carolina Bays Parkway and Conway By-Pass.

Section 2. Further, the following supporting maps, right-of-way plans, and effected tax map lists shall be included as attachments to the Official Map. These documents include detailed descriptions and information that provide accurate locations for the Carolina Bays Parkway and Conway By-Pass. The supporting materials are:

1. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "A") Dated April 1999.

2. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "B") Dated April 1999.

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3. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "C") Dated April 1999.

4. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 1), Dated January 1993, Certified by S.C.P.E. 13500 May 1994.

5. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 2), Revised May, 1998.

6. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 3), Revised May, 1998.

7. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 4), Revised May, 1998.

Section 3. Effective Date. This ordinance shall become effective on third reading.

FIRST READING: 9-7-99
Second Reading: 9-21-99
Third Reading: 10-5-99

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HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Skidmore, Jr., District One

John Krost, District Two

Ray Brown, District Three

Chandler Brigham, District Four

Terry B. Cooper, District Five

Marvin C. Heyd, District Six

James R. Frazier, District Seven

Liz Gillian, District Eight

Ulysses Dewitt, District Nine

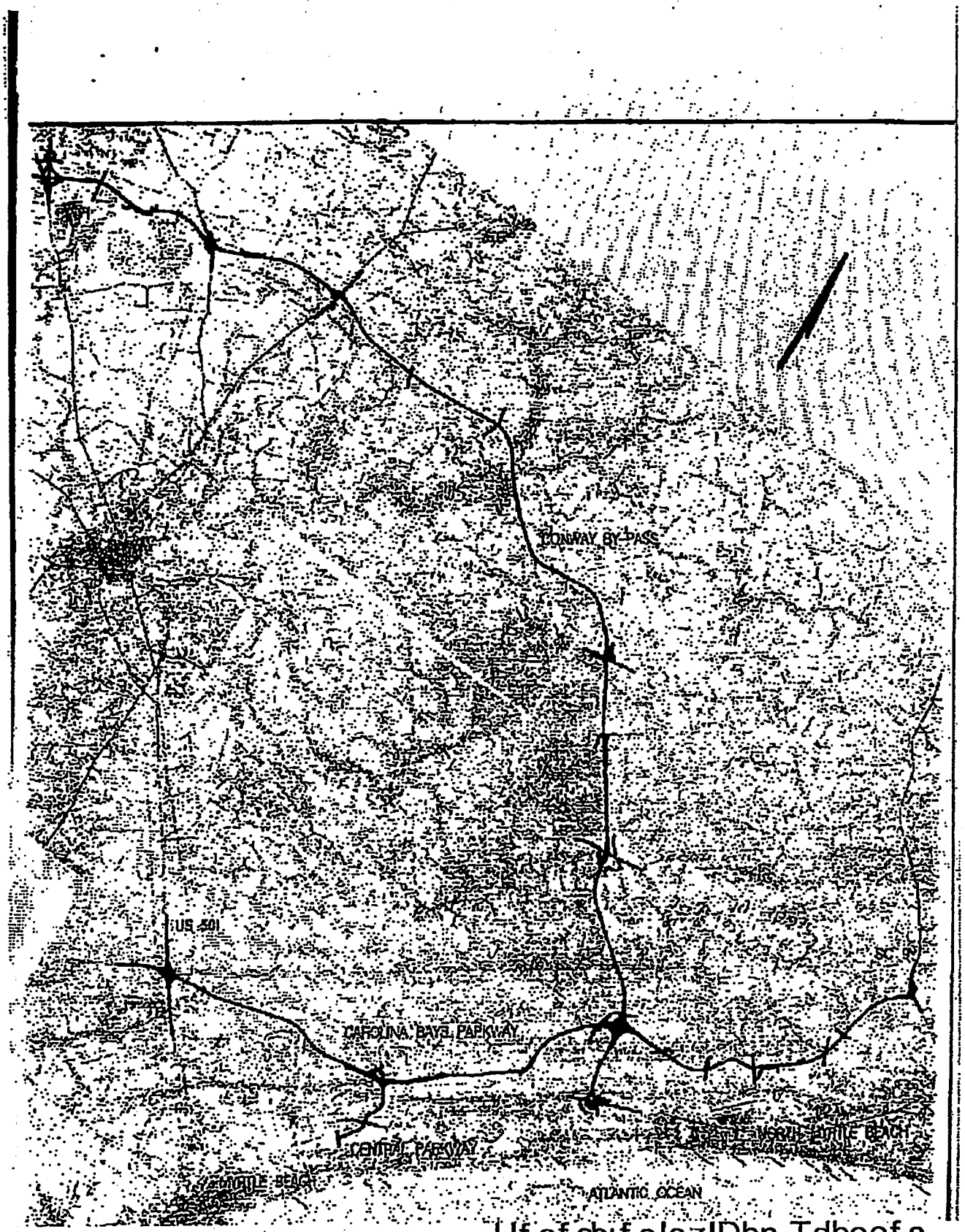
Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST

Amelia L. Snipes, Interim Clerk to Council

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COUNTY COUNCIL OFFICE

COUNTY OF HORRY
COUNTY COUNCIL MEMORANDUM

TO COUNTY COUNCIL:

FROM: Janet L. Carter

DIVISION: Economic Development Division

COMMITTEE WITH JURISDICTION:

☐ General Government ☐ Public Safety ☐ Finance

☐ Human Services ☐ Public Works ☒ Economic Development

SUBJECT OF RESOLUTION OR ORDINANCE: Official Map Ordinance

PURPOSE OF RESOLUTION OR ORDINANCE:

DATE OF FIRST SUBMISSION: September 7, 1999

BRIEF DESCRIPTION:

Costs to other County Programs:

☐ Mandated ☐ Budgeted ☐ Budget Revision Necessary

FINANCIAL IMPACT:

Projections:	Balance Of: YR1	YR2	YR3	YR4
County Cost:	$	$	$	$
State Funds:	$	$	$	$
Federal Funds:	$	$	$	$
Other:	$	$	$	$

If NONE Check Here: ☐

County Administrator Approval

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HORRY COUNTY, S.C. FILED
99 JUN 23 PM 2:29
REGISTER OF DEEDS

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE NO. 107-98

AN ORDINANCE PROVIDING FOR AN OFFICIAL MAP FOR THE UNINCORPORATED SECTIONS OF HORRY COUNTY.

WHEREAS, Title 6, Chapter 7, Code of Laws of South Carolina 1976 as amended, authorizes counties to prepare and adopt an Official Map in order to promote and preserve the public safety, economy, good order, appearance, convenience, prosperity, and general welfare.

WHEREAS, The Horry County Planning Commission after due notice has reviewed and conducted public hearings and recommends the adoption of the Official Map ordinance.

NOW, THEREFORE, PURSUANT TO THE AUTHORITY GRANTED BY THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA, AND THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA, BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA:

Section 1. The Horry County Code of Ordinances is hereby amended by the addition of the following language, to be entitled "Official Map".

SECTION 1 - GENERAL

1.0 AUTHORITY - This Chapter is adopted pursuant to the authority granted under the South Carolina Code of Laws 1976, Title 6, Chapter 7, Article 13, as amended.

1.1 PURPOSE - It is the purpose of this ordinance to protect and promote the public safety, economy, good order, appearance, convenience, prosperity and general welfare, by designating and reserving future locations of streets, highways and public utility rights-of-way, public building sites and public open space for future public acquisition.

1.2 JURISDICTION - This Ordinance shall be effective in the unincorporated portions of Horry County, South Carolina.

1.3 TITLE - This Ordinance shall be known and may be cited as the "Official Map Ordinance of Horry County."

1.4 SEVERABILITY - If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections subsections and clauses shall not be affected thereby.

1.5 CONFLICTING ORDINANCES REPEALED - All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

1.6 EFFECTIVE DATE - This ordinance shall be effective upon third reading.

EXHIBIT 5 7.14.14 (MC)

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SECTION 2 - DEFINITIONS

2.0 **WORDS TO HAVE CUSTOMARY MEANINGS** - Except as specifically defined herein, the word and phrases used in this ordinance shall have their customary meanings, as defined in a standard dictionary.

2.1 **INTERPRETATION OF TERMS** – The following terms shall be defined as follows:

Access – A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

Access Road – A street designed to provide vehicular access to abutting property and to discourage through traffic.

Activity Node (Center) – A location where numerous transportation trips are generated because of a dense, compact concentration of similar or complimentary land uses. Examples of Activity Nodes are office complexes or regional malls (shopping centers).

Condemnation – The exercise by a governmental agency of the right of eminent domain.

Eminent Domain – The authority of a government to take or to authorize the taking of private property for public use.

Encroachment – Any obstruction in a delineated right-of-way or easement.

Official Map – A map or maps showing the location of existing or proposed public streets, highways, public utility rights-of-way, public building sites and public open spaces. A public building site is one on which a public building will be constructed using public funds.

Right-of-Way – Land reserved, used, or to be used for a road, cross walk, railroad, electric transmission lines, oil or gas pipeline, waterline, sanitary storm sewer or other public purpose.

Right-of-Way Cost – All costs of acquired property, special damages, tenant and lessee right, legal and appraisal fees, relocation assistance payments, and all other incidental expenses and costs incurred in connection with the acquisition of said right-of-way.

Setback – The perpendicular distance between the property line and the primary structure running the length of the distance, excluding uncovered porches, decks, and 18" overhangs.

Street – Any public or private way set aside for vehicular travel. The word "street" shall include the words "roads", "roadway", and "thoroughfare".

1. **Arterial** – Carry longer-distance major traffic flows between important activity centers. Conveys traffic between centers. They are designed to provide high-speed

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high level service for efficient movement of people and goods.

2. Frontage Road - A public or private drive which generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street.

3. Collector – A street which is used or intended to be used for moving traffic from minor or local streets to arterial streets including the principal entrance and circulation street or streets of a residential developer.

4. Residential Street - A street which carries no through traffic and which is used or intended to be used primarily for access to abutting residential lots.

5. Cul-de-sac – A local street having one (1) end open to traffic and the other end terminated by a circular vehicle turn-around.

6. Alley – A minor way intended to be used primarily for vehicle service access to the rear or side of properties otherwise abutting a street.

SECTION 3 - MAP CREATION

3.0 PREPARATION AND MODIFICATION OF OFFICIAL MAP - The Planning Commission may receive, make or cause to be made, maps showing the location of lines of proposed new, extended, widened and otherwise improved streets and highways; boundary lines of proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities; and other public open spaces in the whole or in any portion of the unincorporated areas of Horry County. When complete, such maps shall become part of, or be considered, the Official Map for Horry County. As necessary, the County Council or Planning Commission may require that surveys showing the exact location of proposed, new, extended, widened or otherwise improved public use areas be completed.

From time to time, as appropriate, the Planning Commission may modify the Official Map. Such modifications shall require that maps showing the location of lines of proposed new, extended, widened and otherwise improved streets and highways; boundary lines of proposed new and enlarged sites for public buildings, public parks, public playgrounds, public utilities; and other public open spaces in the whole or in any portion of the unincorporated areas of Horry County. As necessary, the County Council or Planning Commission may require that surveys showing the exact location of proposed, new, extended, widened or otherwise improved public use areas.

SECTION 4 - MAP ADOPTION

4.0 ADOPTION OF OFFICIAL MAPS - Official Maps may show the location of existing or proposed public streets, highways and utility right-of-ways, public building sites and public open spaces. The Official Map may include the whole or any part or parts of the unincorporated area of Horry County. County Council shall certify the fact of the establishment of the Official Maps to the Clerk of the Circuit Court of Horry County. The Official Map may consist of any number of separate maps which need not be drawn

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to the same scale; however, such maps shall be indexed on a single map depicting unincorporated areas of Horry County.

4.1 **PUBLIC HEARING** - Before enacting the Official Map Ordinance, or amending the adopted Official Map, the County Council shall hold a public hearing thereon: notice of the time and place of which shall be published in a newspaper of general circulation in the county at least fifteen (15) days in advance of the scheduled public hearing date. For property owners whose property lies within an area to be reserved for public use, a letter of notification shall be sent informing them of the date, time and location of the public hearing.

4.2 **AMENDMENTS** - County Council may from time to time make additions to or modifications of the Official Map and this ordinance.

4.3 **PROCEDURES FOR ADDITIONS AND MODIFICATIONS** - The following procedures shall be followed in making additions and modifications: No change in or departure from the maps shall be made until such proposed changes or departures shall first have been submitted to the Planning Commission for review and recommendation. The Planning Commission shall have thirty (30) days within which to submit its report. If the Planning Commission fails to submit a report within the thirty (30) day period, it shall be deemed to have recommend the proposed amendment.

Once the Planning Commission recommendation has been received by the County Council, a public hearing shall be held.

SECTION 5 - REGULATION

5.0 **CONSTRUCTION OR ENLARGEMENT OF IMPROVEMENTS PROHIBITED** - After adoption of any Official Map by the county, no building, structure, or other improvement, shall hereafter be erected, constructed, enlarged or placed within the reservation area, or setbacks beyond such area, without prior exemption or exception as established by this ordinance or amendments hereto.

5.1 **CONFLICTING PERMITS** - No department, office or employee of Horry County vested with the duty or authority to issue permits or grant approval of the subdivision of land shall issue a permit or approval for uses, buildings, structures, or subdivision where the same would be in conflict with the reservations of the Official map. Any such permit or approval shall be null and void if issued in conflict with the provision of this ordinance.

5.2 **PROCEDURE FOR APPEALING BUILDING PERMIT AND LAND USE RESTRICTIONS** - In cases where any permit has been refused under this authority, the following appeal procedure may be utilized by any affected property owner:

a. An Appeal shall be presented to the Planning Commission.

b. The Planning Commission shall evaluate the appeal and make a report within thirty

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(30) days to the County Council and other appropriate public agency. If no report is made within thirty (30) days, the Planning Commission shall be deemed to have recommended that the appeal be granted.

5.2.1 **REVIEW – PLANNING COMMISSION**

The local Planning Commission shall recommend one of the following actions to the County Council:

a. Exempt the affected land from the restrictions of the Official map.

b. Issuance of desired permits with specified conditions.

c. Initiate appropriate action to acquire the property.

5.2.2 **OFFICIAL ACTION – COUNTY COUNCIL**

Upon receipt of the report of the Planning Commission, the County Council shall within one hundred (100) days:

a. Take official action to exempt the affected land from the restrictions of the Official map provided that such exemption shall have no effect on any applicable zoning restrictions pertaining to the property.

b. Take official action to authorize the issuance of the denied permits subject to specified conditions accepted by the owner, provided that such conditions shall not be contrary to any applicable zoning restrictions pertaining to permitted uses.

c. Either enter into an agreement to acquire or institute condemnation proceedings to acquire the affected property. Action to acquire such property may be instituted by the County Council or other appropriate public agency.

5.2.3 **TIME LIMITS ON COUNCIL ACTION** - Failure of the County Council to act within one hundred (100) days of the receipt of the report of the Planning Commission shall be deemed to constitute approval of the proposed appeal. Thereupon denied permits shall be issued upon demand.

5.2.4 **PUBLIC HEARING** – Before taking final action, County Council shall hold a public hearing as prescribed in Section 4-1 of this ordinance.

SECTION 6 - ADMINISTRATION, ENFORCEMENT, COMPLAINTS AND REMEDIES

6.0 **ADMINISTRATION AND ENFORCEMENT** - The Zoning Administrator shall administer and enforce this ordinance. The Zoning Administrator may be provided with the assistance of such other persons as the Planning Director my direct. It is the intent of this chapter that all questions of administration and enforcement shall first be presented to the Zoning Administrator and that such questions shall be presented to the Planning

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Commission only upon reference by or appeal from the decisions of the Zoning Administrator.

No building shall be issued a zoning permit or certificate of zoning compliance under the terms and conditions of the Official Map Ordinance of Horry County until all plans for the development proposal have been submitted to the Zoning Administrator for review and approval.

6.1 **FILING FEES** - A non-refundable fee of $150.00 will be charged for appeal and exemption of properties from the restrictions of the Official Map.

6.2 **COMPLAINTS REGARDING VIOLATIONS AND REMEDIES** - Whenever a violation of this ordinance occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate and take whatever action is necessary to assure compliance with the ordinance.

6.3 **REMEDIES** - In case any building or structure is proposed to be, or is erected, constructed, reconstructed, altered, maintained, or used; or any land is proposed to be or is used in violation of this ordinance, the Zoning Administrator or any other person aggrieved may in addition to other remedies provided by law institute an injunction, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove, such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

6.5 **PENALTIES FOR VIOLATION** - Any person violating any provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be imprisoned for a period not to exceed thirty (30) days and/or fined not more than five hundred ($500) dollars for each offense. Each day such violation continues shall constitute a separate offense.

Dated this _____ day of _____, 1998.

HORRY COUNTY COUNCIL

_____
Raymond J. Brown, Acting Chairman

_____ _____
Ray Skidmore, Jr., District 1 John Kost, District 2

_____
Chandler Brigham, District 4

_____ _____
Chandler C. Prosser, District 5 James R. Frazier, District 7

_____ _____

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Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST

Rosella H. Carroll, Clerk to Council

Approved:

County Staff Attorney

FIRST READING: 8-18-98

SECOND READING: 9-1-98

THIRD READING: 6-22-99

BOOK 2158 PAGE 398

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HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Shidmore, Jr., District One

John Kost, District Two

Ray Brown, District Three

Chandler Brigham, District Four

Terry B. Cooper, District Five

Marvin C. Heyd, District Six

James R. Frazier, District Seven

Liz Gilland, District Eight

Ulysses Dewitt, District Nine

Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Rosella H. Carroll, Clerk to Council

BOOK 2158 PAGE 399

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325410

COUNTY OF HORRY

FILED
HORRY COUNTY, S.C.
2000 JAN 14 AM 8:20

STATE OF SOUTH CAROLINA

ORDINANCE NO. 153-99

R.M.C.

AN ORDINANCE PROVIDING FOR THE ADOPTION OF AN OFFICIAL MAP FOR THE UNICORPORATED SECTIONS OF HORRY COUNTY.

Whereas, Title 6, Chapter 7, Code of Laws of South Carolina 1976 as amended, authorizes counties to prepare and adopt an Official Map, and

Whereas, Horry County Council developed and adopted Ordinance # 107-98 allowing an Official Map to be created for the purpose of promoting and preserving the public health, safety, and welfare in Horry County, and

Whereas, one purpose of the Official Map is to designate and preserve future locations of streets and highways, and

Whereas, the Carolina Bays Parkway and Conway By-Pass are two important roadways that are needed in Horry County to promote and preserve the public safety, economy, prosperity, and general welfare, and

Whereas, the Horry County Planning Commission has reviewed the plans for the Carolina Bays Parkway and Conway By-Pass and recommends that their locations be shown on an Official Map,

NOW, THEREFORE BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA:

Ordinance 107-98 is amended as follows:

Section 1. The attached map shall be adopted as the Index Map for the Official Map. The index map shows the proposed right-of-way alignment for the Carolina Bays Parkway and Conway By-Pass.

Section 2. Further, the following supporting maps, right-of-way plans, and effected tax map lists shall be included as attachments to the Official Map. These documents include detailed descriptions and information that provide accurate locations for the Carolina Bays Parkway and Conway By-Pass. The supporting materials are:

1. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "A") Dated April 1999.

2. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "B") Dated April 1999.

EXHIBIT
6
7.14.14

DEED
2 198 0092

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3. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Carolina Bays Parkway S.C. Route 31 (Segment "C") Dated April 1999.

4. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 1), Dated January 1993, Certified by S.C.P.E. 13500 May 1994.

5. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 2), Revised May, 1998.

6. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 3), Revised May, 1998.

7. South Carolina Department of Transportation, Plan and Profile of Proposed State Highway Horry County Conway By-Pass (Segment 4), Revised May, 1998.

Section 3. Effective Date. This ordinance shall become effective on third reading.

FIRST READING: 9-7-99
Second Reading: 9-21-99
Third Reading: 10-5-99

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HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Skidmore, Jr., District One

John Krist, District Two

Ray Brown, District Three

Chandler Brigham, District Four

Terry B. Cooper, District Five

Marion C. Heyd, District Six

James R. Frazier, District Seven

Liz Gilland, District Eight

Ulysses Dewitt, District Nine

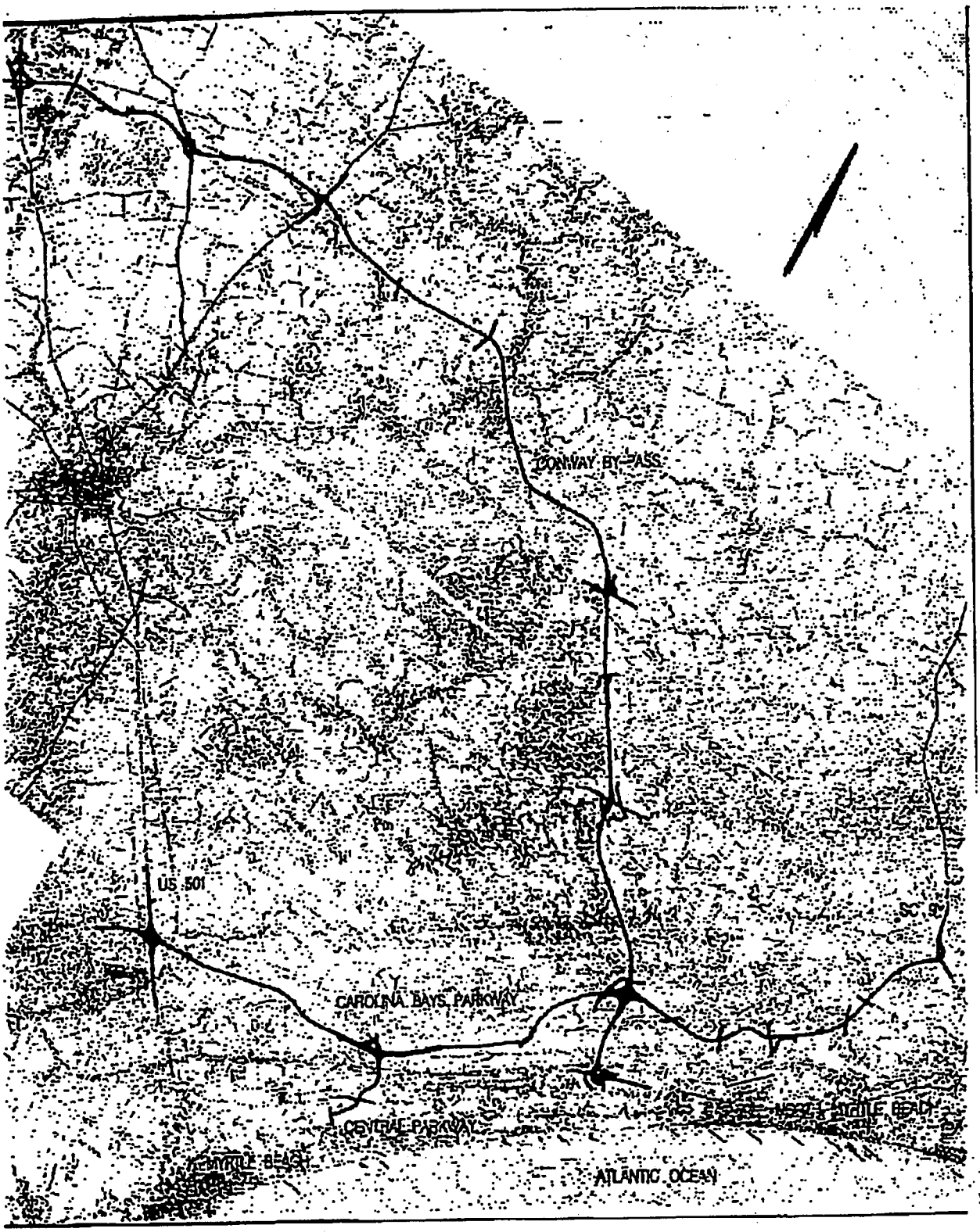
Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Amelia L. Simpes, Interim Clerk to Council

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RECEIVED

99 AUG 24 AM 11:41

COUNTY COUNCIL OFFICE

COUNTY OF HORRY
COUNTY COUNCIL MEMORANDUM

TO COUNTY COUNCIL:

FROM: Janet L. Carter

DIVISION: Economic Development Division

COMMITTEE WITH JURISDICTION:

☐ General Government ☐ Public Safety ☐ Finance

☐ Human Services ☐ Public Works ☒ Economic Development

SUBJECT OF RESOLUTION OR ORDINANCE: Official Map Ordinance

PURPOSE OF RESOLUTION OR ORDINANCE:

DATE OF FIRST SUBMISSION: September 7, 1999

BRIEF DESCRIPTION:

Costs to other County Programs:

☐ Mandated ☐ Budgeted ☐ Budget Revision Necessary

FINANCIAL IMPACT:

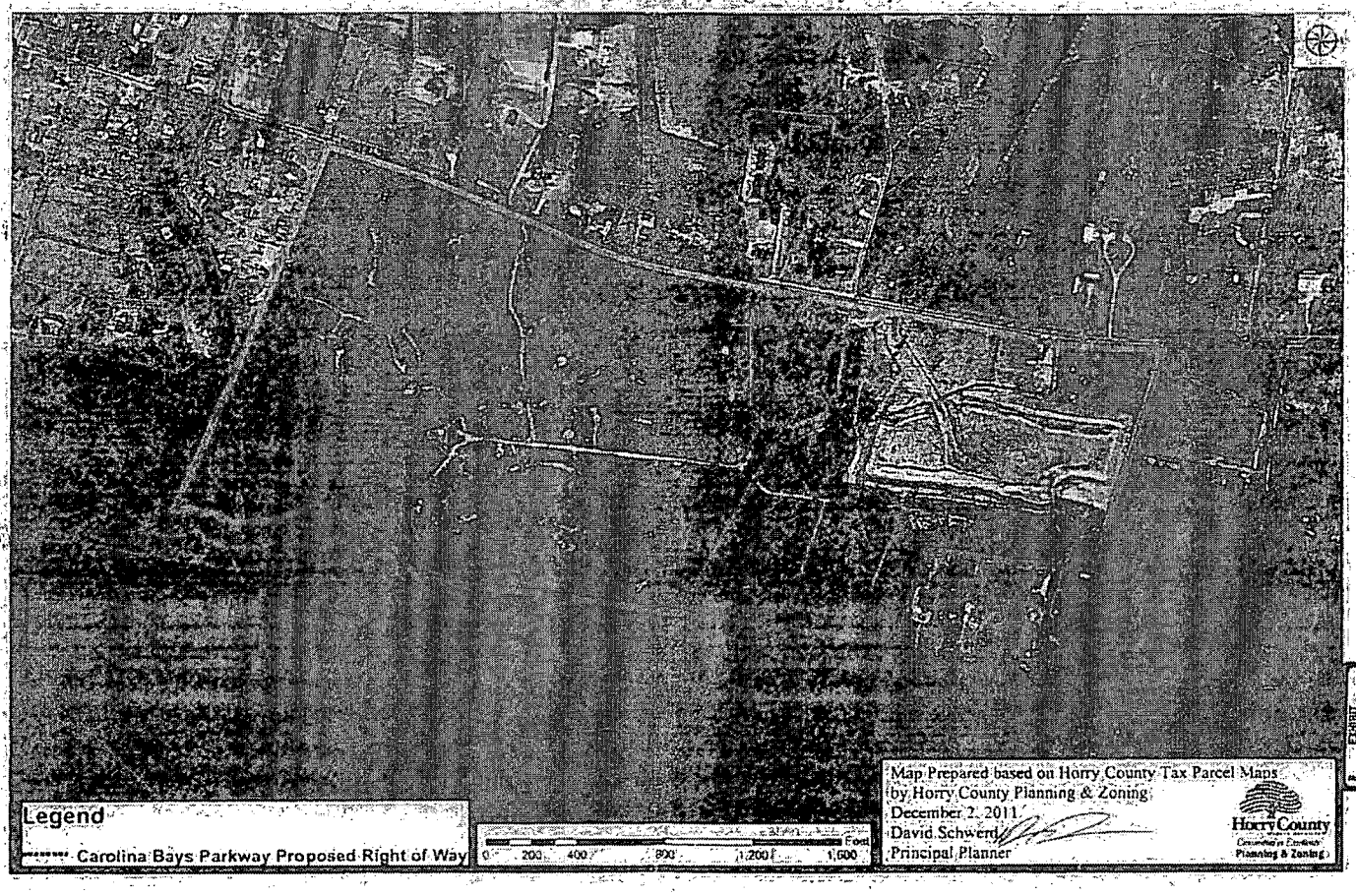
Projections:	Balance Of: YR1	YR2	YR3	YR4
County Cost:	$	$	$	$
State Funds:	$	$	$	$
Federal Funds:	$	$	$	$
Other:	$	$	$	$

If NONE Check Here: ☐

County Administrator Approval

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Carolina Bays Parkway Right of Way Map



EXHIBIT

Last Revised 7/21/2006

PRELIMINARY CLOSING CHECKLIST

Definitions

Lender: Jericho State Capital Corp. of Florida

Borrower: Peachtree Properties of North Myrtle Beach, LLC

Guarantors: Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, T&J Development Inc. and any associated companies

WBEM&S: Westerman Ball Ederer Miller & Sharfstein LLP

BC: Robert Gwin, Esq.

Title: Chicago Title Insurance Company

Property: 131 acres off Peach Tree Road, Myrtle Beach, Horry County, SC

	Document	Responsible Party	Status
A.	LOAN DOCUMENTS:		
	Mortgage Note	WBEM&S	Drafted
	Mortgage and Security Agreement	WBEM&S	Drafted
	Assignment of Leases and Rents	WBEM&S	Drafted
	Guaranty	WBEM&S	Drafted
	UCC-1s	WBEM&S	Drafted

	Document	Responsible Party	Status
	Environmental Indemnity of Borrower and Guarantors	WBEM&S	Drafted
	Document Re-execution Agreement	WBEM&S	Drafted
	Brokerage Indemnity	WBEM&S	Drafted
	Borrower's Certificate (including financial certification)	WBEM&S	Drafted
	Guarantor's Certificate (including financial certification)	WBEM&S	Drafted
	Assignment of Agreements, Permits and Contracts (if required)	WBEM&S	N/A
	Other Escrow/Holdback Letters (if required)	WBEM&S	Drafted
	Title Company Recording Instructions (if required)	WBEM&S	
B.	TITLE AND SURVEY:		
	Title Insurance Commitment, including copies of all recorded instruments, real estate tax, vault and water and sewer taxes and charges searches; verification of independent tax lot status	BC	Received.
	ALTA Title Insurance Policy including the following endorsements: (a) Land Same as Survey, (b) ALTA 9, (c) Contiguity and (d) Affirmative insurance and other endorsements as Lender may require	BC	Need pro-forma policy and draft Land same as survey endorsement
	Title Affidavits as required by the Title Company	BC	Open
	Flood Zone Certification	BC	Open
	Current Survey certified to Lender	BC	Open
	Paid Receipt of Title Company	Title Company	Open

GWIN_01135

	Document	Responsible Party	Status
	UCC-1 financing statement search, tax lien search, Patriot Act searches and judgment search against Borrower and Guarantor (Secretary of State for Borrower and Guarantor, County where property is located and principal residence for Guarantor and, if required by Lender, where Borrower is organized)	BC	Open
	Insured Closing Letter	BC	Open
C.	ZONING, USE AND OCCUPANCY:		
	Zoning verification letter	BC	Received
	Municipal departmental violation searches, including environmental lien searches	BC	Open
	Letter from Clemson Extension re: Tropical Soda Apple	Borrower	Open
	US Army Corps of Engineers approval and certification of wetlands delineation	Borrower	Open
D.	LIABILITY INSURANCE:		
	Original Insurance Policies, with Lender Loss Payable Clause and proof of premium payment	Borrower	Open
	Flood Insurance (if applicable)	Borrower	Open
E.	ORGANIZATIONAL DOCUMENTS OF BORROWER AND MEMBER:		
	For Peachtree Properties of North Myrtle Beach, LLC		
	(a) Articles of Organization and all amendments thereto, certified as filed by the Secretary of State where formed	BC	Open
	(b) Operating Agreement, and all amendments thereto	BC	Received draft

	Document	Responsible Party	Status
	(c) Resolution of Members	BC	Received draft. Need to revise to include David Hix signature.
	(d) Certificate of Existence issued by Secretary of State where organized and where property is located	BC	Received
	For T&J Development of NMB, LLC	BC	
	(a) Articles of Organization and all amendments thereto, certified as filed by the Secretary of State where formed	BC	Received.
	(b) Operating Agreement, and all amendments thereto	BC	Received, but missing pages 11-14 and 31.
	(c) Resolution of members	BC	N/A
	(d) Certificate of Existence and Good Standing issued by Secretary of State where organized and where property is located	BC	Received Certificate of Existence but need recent Certificate of Good Standing.
F.	OPINION LETTERS:		
	Due execution, enforceability etc.	BC	Received draft.
	Local counsel opinion (including zoning)	BC	N/A
G.	SUPERIOR AND SUBORDINATE MORTGAGES:		
	Copies of all loan documents entered into by Borrower with the holder of any other mortgage	BC	Received draft of first mortgage loan documents/need executed copies. Need third mortgage loan documents, if applicable.
	Inter-Creditor Agreement(s) with other Mortgagees	BC	Open

	Document	Responsible Party	Status
	Proof of paydown of existing second mortgage		N/A
H.	ACQUISITION DOCUMENTS:		
	Certified copy of Contract of Sale, together with Deed and other closing documents re: acquisition, if applicable	BC	Received drafts of the contract and 1st, 2nd, 4th, 6th and 7th amendments. Need signed copies of contract and all amendments and assignment to Borrower, together with closing documents.
I.	MISCELLANEOUS:		
	Evidence of Payment of Mortgage Broker Commissions	Borrower	Open
	Loan Disbursement Instructions/Wiring Instructions	Borrower	Open
	Photographic Identification	WBEM&S	Open
	Environmental Report		Received
J.	PAYMENTS AT CLOSING:		
	Payment of interest for the month of closing and funding of interest reserve		Open
	Payment of Lender's attorneys' fees and/or disbursements		Open
	Payment of Lender's local counsel fees		Open
	Payment of commitment fee		Open
	Payment of origination fee		Open
	Payment of any other fees and expenses of Lender		Open
	Payment of escrow hold-backs (if required)		

	Document	Responsible Party	Status
	Payment of tax and insurance escrow deposit (if required)		
	Payment of title insurance premiums and recording taxes and fees		Open

PLANNING & ZONING DEPT
1301 2nd Avenue Room 1 D 09
Conway, SC 29526

Phone: (843) 915-5490
Fax: (843) 915-6490

July 17, 2007

Attention: John Rion

Re: Zoning Confirmation
TMS# 178-00-05-032

To Whom It May Concern:

This is to confirm that the property identified by tax map number 178-00-05-032 is currently zoned R-1 on the Horry County Zoning Maps.

If I may be of further assistance, please advise.

Sincerely,

Rennie Mincey

Rennie Mincey
Assistant Zoning Administrator

TRANSACTION REPORT

2006/JUL/19/WED 13:26

FAX(TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
01	JUL/19	13:25	15166229212	0:00:59	3	OK SG3	9889

2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
843-839-2239
843-839-2244 (Fax)

GWIN LAW OFFICES

Fax

To: Jay Lerinton **From:** B.J. Collins, Legal Assistant

Fax: 516-622-9212 **Pages:** 3

Phone: 516-622-9200 **Date:** 7-19-06

Re: Peachtree Properties **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

Attached please find a copy of the Certificate of Existence for Peachtree Properties of North Myrtle Beach, together with Zoning Confirmation. Please call should you have any questions.

Thank you

B.J. Collins
Legal Assistant
bjcollinsmb@yahoo.com

2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
843-839-2239
843-839-2244 (Fax)

GWIN LAW OFFICES

Fax

To: Jay Levinton **From:** B.J. Collins, Legal Assistant

Fax: 516-622-9212 **Pages:** 3

Phone: 516-622-9200 **Date:** 7-19-06

Re: Peachtree Properties **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:

Attached please find a copy of the Certificate of Existence for Peachtree Properties of North Myrtle Beach, together with Zoning Confirmation. Please call should you have any questions.

Thank you.

B.J. Collins
Legal Assistant
bjcollinsmb@yahoo.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation,

Plaintiffs,

vs.

T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T.J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC,

Defendants.

Case No. 07 CP 26 – 3579

FILED
HORRY COUNTY
07 JUN -8 PM 2:24
CLERK OF COURT

COMPLAINT

(Foreclosure, Non-Jury, Deficiency Demanded)

Plaintiffs, complaining of the Defendants herein, allege that:

Jurisdiction

1. Plaintiff Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership (***"Jericho"***), is a limited partnership organized under the laws of the State of Delaware with a principal place of business in Boca Raton, Florida.

2. Plaintiff Jericho State Capital Corporation of Florida, a Florida corporation (***"Jericho Florida"***), is a corporation organized under the laws of the State of Florida with a principal place of business in Boca Raton, Florida.

3. Jericho and Jericho Florida are sometimes collectively referred to herein as ***"Plaintiff."***

4. Upon information and belief, Defendant T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development, LLC (***"T & J"***) is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

5. Upon information and belief, Defendant Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company (***"Peachtree"***), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Horry County, South Carolina, has an interest in the real property that is the subject of this action, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

6. Upon information and belief, Defendant Jeffrey Shoup is a citizen and resident of Horry County, South Carolina, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

7. Upon information and belief, Defendant Joyce Shoup is a citizen and resident of Horry County, South Carolina, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

8. Upon information and belief, Defendant David Hix is a citizen and resident of Horry County, South Carolina, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

9. Upon information and belief, Defendant Paula Hix is a citizen and resident of Horry County, South Carolina, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

10. Upon information and belief, Defendant Ocean Developers LLC, a South Carolina limited liability company (***"Ocean Developers"***), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and has submitted to jurisdiction in the courts of South Carolina and, as such, is subject to the jurisdiction of this Court.

11. Upon information and belief, Defendant Glenn Michaels (***"Michaels"***) may have or claim to have an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

12. Upon information and belief, Defendants Manny Pappus ("***Pappus***") and T.J. Ungaro ("***Ungaro***") may have or claim to have an interest in the real property that is the subject of this action, and, as such, they are each subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

13. Upon information and belief, Defendant North Myrtle Beach Investment Group, LLC ("***North Myrtle Beach***") is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in North Myrtle Beach, South Carolina, and may have or claim to have an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

14. Upon information and belief, Defendant Horst Goetz ("***Goetz***") may have or claim to have an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

15. Upon information and belief, Defendant Durward W. Hancock ("***D. Hancock***") may have or claim to have an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

16. Upon information and belief, Defendant Hortense G. Hancock ("***H. Hancock***") may have or claim to have an interest in the real property that is the subject of this action, and as such is subject to the jurisdiction of this Court pursuant to S.C. Code Ann. § 36-2-803(A)(5).

17. Upon information and belief, Defendant McClam Investment Company, LLC ("***McClam***"), is a limited liability company organized and existing under the laws of the State of South Carolina with a principal place of business in Columbia, South Carolina, and may have or claim to have an interest in the real property that is the subject of this action, and, as such, is subject to the jurisdiction of this Court.

18. The real property which is the subject of this action is located in Horry County, South Carolina, and, as such, is subject to the jurisdiction of this Court.

19. This action involves two (2) separate loans; one loan was made by Jericho Florida to Peachtree (the "***Peachtree Loan***") and the other loan was made by both Jericho and Jericho Florida to T & J (the "***T & J Loan***"), both of which are cross-collateralized and cross-defaulted pursuant to the terms of a Cross-Collateralization Agreement which is identified hereinafter.

The Peachtree Loan

A. The Peachtree Note

20. On July 24, 2006, for value received, Peachtree executed and delivered to Jericho Florida a promissory note in the original principal amount of $4,263,888.00 (the "***Peachtree Note***"), pursuant to which Peachtree promised to pay to Jericho Florida said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein, and all expenses of collection or enforcement of payment of the Peachtree Note, including, but

not limited to, reasonable attorney's fees and expenses. A copy of the Peachtree Note is attached hereto and incorporated herein as **Exhibit A.**

B. The Peachtree Mortgage, Security Agreement and Assignment of Leases and Rents

21. In order to secure the payment of the Peachtree Note, for value received, Peachtree granted to Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated July 24, 2006 (the ***"Peachtree Mortgage"***), covering certain real property, described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon, and all other contracts, contract rights, leases, rents, and other personal property described more fully therein (collectively, the ***"Peachtree Property"***). The Peachtree Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on July 25, 2006 in Mortgage Book 4629 at Page 277. A copy of the Peachtree Mortgage is attached hereto and incorporated herein as **Exhibit B.**

22. By its terms, the Peachtree Mortgage additionally secures any future or additional advances made by Jericho Florida at its option to Peachtree, up to a maximum principal secured indebtedness of $8,527,776.00, plus interest and any disbursements made for the payment of taxes, levies, or insurance on the Peachtree Property, plus any sums expended to cure a default under the Peachtree Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Jericho Florida in connection with enforcing the Peachtree Note and Peachtree Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Jericho Florida to enforce and protect its rights and interest under the Peachtree Mortgage and Peachtree Note, whether incurred before or after any decree or judgment of foreclosure.

23. By its terms, the Peachtree Mortgage secures the covenant of Peachtree not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the Peachtree Property with any such mortgage or lien placed on the Peachtree Real Property to be deemed void ab initio. The Peachtree Mortgage further recites that it is subject to a first mortgage upon the Peachtree Property in favor of R.E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $18,520,000.00 (the ***"Peachtree Superior Mortgage"***).

C. The Assignment of Leases and Rents

24. In order to further secure Peachtree's obligations to the Jericho Florida, Peachtree granted to Jericho Florida its Assignment of Leases and Rents dated July 24, 2006 (the ***"Peachtree Assignment"***). The Peachtree Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on September 5, 2006, in Deed Book 3152 at Page 472. A copy of the Peachtree Assignment is attached hereto and incorporated herein as **Exhibit C.**

D. Peachtree UCC Financing Statement

25. In order to further evidence the grant of a security interest in the personal property and fixtures described in the Peachtree Mortgage and Peachtree Assignment, Jericho filed a UCC-1 Financing Statement on July 25, 2006 in the Office of the Register of Deeds for Horry County in

Mortgage Book 4629 at Page 333, that identifies Peachtree as debtor and Jericho Florida as secured party (the ***"Peachtree UCC"***). A copy of the Peachtree UCC is attached hereto and incorporated herein as **Exhibit D**.

E. The Guaranty

26. In order to further secure Peachtree's obligations to Jericho Florida, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J (collectively, the ***"Peachtree Guarantors,"*** individually, each a ***"Peachtree Guarantor"***) granted to Jericho Florida a Guaranty, dated July 24, 2006 (the ***"Peachtree Guaranty"***), pursuant to which each Peachtree Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Jericho Florida prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by Peachtree of all covenants and conditions set forth in the Peachtree Note, the Peachtree Mortgage, the Peachtree Assignment, the Peachtree UCC, and any and all other documents evidencing or securing the obligations set forth therein (collectively, the ***"Peachtree Loan Documents"***), and the payment of any and all expenses paid or incurred by Jericho Florida in collecting any or all of the sums due and in enforcing its rights under the Peachtree Guaranty or the Peachtree Loan Documents, including, but not limited to, attorneys fees. A copy of the Peachtree Guaranty is attached hereto and incorporated herein as **Exhibit E**.

F. Other Liens

27. On October 30, 2006, Peachtree gave to Michaels a Mortgage of Real Property upon the Peachtree Property purporting to secure the principal amount of $1,500,000.00, which mortgage was recorded on November 7, 2006 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4762 at page 785 (the ***"Michaels Mortgage"***).

28. The Michaels Mortgage was granted without the knowledge or consent of Jericho Florida and is either subordinate to lien of the Peachtree Mortgage or, pursuant to the terms of the Peachtree Mortgage, void ab initio.

29. On March 9, 2007, Pappus and Ungaro filed an Amended Lis Pendens (the ***"Amended Lis Pendens"***) in the Office of the Clerk of Court for Horry County South Carolina in File No. 06-LP-126 purporting to affect the title to the Peachtree Property.

30. No summons or complaint was filed by Pappus and Ungaro in connection with the Amended Lis Pendens within twenty (20) days after such filing or at any time subsequent thereto and therefore such Amended Lis Pendens is invalid and void and of no further force or effect.

The T & J Loan

A. The T & J Note

31. On October 6, 2006, for value received, T & J executed and delivered to Jericho and Jericho Florida a promissory note in the original principal amount of $8,000,000.00 (the ***"T & J Note"***),

pursuant to which T & J promised to pay to Jericho and Jericho Florida said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein and all expenses of collection or enforcement of payment of the T & J Note, whether or not suit is brought, and if suit is brought, then through all appellate actions, including, but not limited to, reasonable attorney's fees and expenses. A copy of the T & J Note is attached hereto and incorporated herein as **Exhibit F**

B. The T & J Mortgage, Security Agreement and Assignment of Leases and Rents

32. In order to secure the payment of the T & J Note, for value received T & J granted to Jericho and Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated October 6, 2006 (the ***"T & J Mortgage"***), covering certain real property described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the ***"T & J Property"***). Individual portions of the T & J Property are sometimes referred to herein and in the T&J Mortgage as ***Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, Parcel 7 and Parcel 8.*** The T & J Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Mortgage Book 4724 at Page 685. A copy of the T & J Mortgage is attached hereto and incorporated herein as **Exhibit G.**

33. By its terms, the T & J Mortgage additionally secures any future or additional advances made by Jericho and Jericho Florida at its option to T & J, up to a maximum principal secured indebtedness of $16,000,000.00, plus interest and any disbursements made for the payment of taxes, levies or insurance on the T & J Property, plus any sums expended to cure a default under the T & J Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Jericho and Jericho Florida in connection with enforcing the T & J Note and T & J Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Jericho and Jericho Florida to enforce and protect its rights and interest under the T & J Mortgage and T & J Note, whether incurred before or after any decree or judgment of foreclosure.

34. By its terms, the T & J Mortgage secures the covenant of T & J not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the T & J Property with any such mortgage or lien placed on the T & J Property to be deemed void ab initio. The T & J Mortgage further recites that it is subject to a first mortgage upon the T & J Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $12,950,000.00 and a first mortgage upon Parcel 8 of the T & J Property in favor of First Palmetto Savings Bank FSB securing a note in the principal amount of $1,100,000.00 (collectively, the ***"T & J Superior Mortgage"***).

C. The T & J Assignment of Leases and Rents

35. In order to further secure T & J's obligations to Jericho and Jericho Florida, T & J granted to Jericho and Jericho Florida its Assignment of Leases and Rents dated October 6, 2006 (the ***"T & J Assignment"***). The T & J Assignment was recorded in the Office of the Register of Deeds for

42. Upon information and belief, the debt secured by the Hancock Mortgage was satisfied at the closing of the T & J Loan and the Hancock Mortgage is no longer a valid lien on Parcel 8 of the T & J Property and should be cancelled of record.

43. On October 6, 2006, T & J gave a Mortgage, Assignment of Rents and Security Agreement covering the T & J Property to McClam in the principal amount of $850,000.00 that was recorded on October 9, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4724 at Page 744 (the ***"McClam $850M Mortgage"***).

44. The lien of the McClam $850M Mortgage was granted without the knowledge or consent of Jericho or Jericho Florida and is either subordinate to the lien of the T & J Mortgage or, pursuant to the terms of the T & J Mortgage, void ab initio.

The Cross-Collateralization Agreement

45. The Peachtree Loan Documents and the T & J Loan Documents are collectively referred to hereinafter from time to time as the ***"Loan Documents."*** The Peachtree Note and T & J Note are collectively referred to hereinafter from time to time as the ***"Secured Obligations."*** The Peachtree Mortgage, Peachtree Assignment, T & J Mortgage, T & J Assignment are collectively referred to hereinafter from time to time as the ***"Security Documents."***

46. As a condition to the grant to T & J of the T & J Loan, T & J and Peachtree granted to Jericho and Jericho Florida a Cross-Collateralization Agreement dated October 6, 2006 (the ***"Cross-Collateralization Agreement"***) whereby T & J and Peachtree each agreed that the Loan Documents are and will be cross-collateralized and cross-defaulted with one another so that each of the Security Documents shall secure payment and performance of all of the Secured Obligations and that a default under any of the Loan Documents shall constitute a default under all of the Loan Documents. A true and correct copy of the Cross-Collateralization Agreement is attached hereto and incorporated herein as **Exhibit J.**

The Peachtree Default and Acceleration

47. On or about March 14, 2007, Jericho Florida gave written notice to Peachtree of its receipt of notification from the holder of the Peachtree Superior Mortgage of Peachtree's failure to make payment of a total Past Due Amount of $708,600.00 due under the Peachtree Superior Mortgage, which notice required Peachtree to cure such default under the Peachtree Superior Mortgage. On or about March 23, 2007, Jericho Florida gave additional written notice to Peachtree of its failure to pay such Past Due Amount and advised Peachtree of Jericho Florida's intent to cure such Peachtree Superior Mortgage default by paying said Past Due Amount on March 26, 2007, and further advising Peachtree that in the event that it failed to reimburse Jericho Florida in full within five days following the date of Jericho Florida's payment of the Past Due Amount, Peachtree would thereupon be in default under the terms of the Peachtree Loan Documents. Jericho Florida paid the sum of $713,152.50 to the holder of the Peachtree Superior Mortgage on March 26, 2007 to cure Peachtree's defaults under the Peachtree Superior Mortgage, and Peachtree has thereafter failed or refused to reimburse all or any portion thereof to Jericho

Florida. Copies of the foregoing letters dated March 14, 2007 and March 23, 2007 (the ***"Peachtree Demand Letters"***), are attached hereto and incorporated herein as **Exhibit K**.

48. Jericho Florida has subsequently paid two (2) additional monthly installments due to the holder of the Peachtree Superior Mortgage on April 10, 2007 in the amount of $185,200.00 and on May 9, 2007 in the amount of $185,200.00. Notwithstanding the Peachtree Demand Letters and notices given by Jericho Florida with respect to said two (2) additional payments, no reimbursement of any such sums has been paid by Peachtree to Jericho Florida.

49. The sums so paid by Jericho Florida on account of the Peachtree Superior Mortgage, totaling $1,083,552.50, are a portion of the secured indebtedness under the terms of the Peachtree Mortgage. Peachtree's failure or refusal to pay the same within the time required by the Peachtree Demand Letters constitutes an event of default on the part of Peachtree under the terms of the Peachtree Mortgage and the other Peachtree Loan Documents.

50. Additionally, Peachtree's grant of the Michaels Mortgage without the knowledge or consent of Jericho Florida constitutes an event of default under the Peachtree Mortgage.

51. The foregoing events of default under the Peachtree Mortgage confer upon Jericho Florida the right to accelerate payment of the Peachtree Note in accordance with its terms and to exercise all rights and remedies available to Jericho Florida under the terms and provisions of the Peachtree Loan Documents, including the right without limitation to institute this action for foreclosure of the Peachtree Mortgage and to seek and obtain a deficiency judgment against Peachtree and the Peachtree Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the Peachtree Property in accordance with applicable law. Jericho Florida accordingly hereby exercises its rights to accelerate and declare to be due and payable in full the Peachtree Note and all other enumerated sums secured by the Peachtree Mortgage, and to foreclose the Peachtree Mortgage.

52. As of the date of this Complaint, Jericho Florida is due from Peachtree the outstanding principal balance of the Peachtree Note in the sum of $4,263,888.00, interest, under the Peachtree Note to the extent not being paid currently out of the Interest Reserve Account identified in the Peachtree Note, unreimbursed payments made by Jericho Florida on account of the Peachtree Superior Mortgage, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs. Interest shall continue to accrue each day hereafter on the foregoing sums at the default rate of twenty-four and one-half percent (24.5%) per annum as set forth in the Peachtree Note.

53. Plaintiff is entitled to have an order entered foreclosing the Peachtree Mortgage and selling the Peachtree Property at public sale in accordance with law, subject to the Peachtree Superior Mortgage, but free and clear of all subordinate liens, including without limitation the Michaels Mortgage and the Amended Lis Pendens.

54. Plaintiff is entitled to a judgment against Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J jointly and severally, in the amount of any deficiency remaining after sale of the Peachtree Property.

55. Peachtree has waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the Peachtree Property.

The T & J Default and Acceleration

56. Pursuant to the terms of the Cross-Collateralization Agreement, the foregoing events of default under the Peachtree Note and Peachtree Mortgage constitute an event of default under the T & J Note and T & J Mortgage.

57. Additionally, T & J's grant of the McClam $850M Mortgage without the knowledge or consent of Jericho and Jericho Florida constitutes an event of default under the T & J Mortgage.

58. The foregoing events of default under the T & J Mortgage confer upon Jericho and Jericho Florida the right to accelerate payment of the T & J Note in accordance with its terms and to exercise all rights and remedies available to Jericho and Jericho Florida under the terms and provisions of the T & J Loan Documents, including the right without limitation to institute this action for foreclosure of the T & J Mortgage and to seek and obtain a deficiency judgment against T & J and the T & J Guarantors, jointly and severally, in the amount of any deficiency remaining after the foreclosure sale of the T & J Property in accordance with applicable law. Jericho and Jericho Florida accordingly hereby exercise their rights to accelerate and declare to be due and payable in full the T & J Note and all other enumerated sums secured by the T & J Mortgage, and to foreclose the T & J Mortgage.

59. As of the date of this Complaint, the following sums are due to Jericho and Jericho Florida pursuant to the T & J Loan Documents and are secured by the T & J Mortgage: the outstanding principal balance of the T & J Note in the sum of $8,000,000.00, interest under the T & J Note to the extent not being paid currently out of the Interest Reserve Account identified in the T & J Note, unreimbursed payments made by Jericho and Jericho Florida on account of the T & J Superior Mortgage to the extent not being paid currently out of the First Mortgage Interest Reserve identified in the T & J Note, together with all expenses associated with or incurred in connection with this action, including, but not limited to, reasonable attorneys' fees and costs. Interest shall continue to accrue each day hereafter on the foregoing sums at the default rate of forty (40%) per annum as set forth in the T & J Note.

60. Plaintiff is entitled to have an order entered, foreclosing the T & J Mortgage and selling the T & J Property at public sale in accordance with law, subject to the T & J Superior Mortgage, but free and clear of all subordinate liens, including without limitation the McClam $850M Mortgage.

61. Plaintiff is entitled to the entry of a further order awarding judgment against T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree jointly and severally, in the amount of any deficiency remaining after sale of the T & J Property.

62. T & J and the T & J Guarantors have each waived the statutory right of appraisal, and the high bid at the judicial foreclosure sale shall be applied to the debt regardless of any appraised value of the T & J Property.

Reformation

63. By deed dated January 23, 2004, Defendant North Myrtle Beach attempted to convey or conveyed Parcel 8 of the T & J Property to T & J Development, LLC (the ***"North Myrtle Beach Deed"***). The North Myrtle Beach Deed was recorded in the Office of the Register of Deeds for Horry County in Deed Book 2691 at Page 456.

64. Upon information and belief, on January 23, 2004, T & J Development, LLC did not exist, nor does it currently exist according to the records of the South Carolina Secretary of State as of the date of this Complaint.

65. Upon information and belief, through the North Myrtle Beach Deed, North Myrtle Beach intended to and did convey Parcel 8 to T & J.

66. Upon information and belief, neither North Myrtle Beach nor T & J Development LLC has any remaining right, claim or interest of any kind in Parcel 8 and the T & J Real Property.

67. Upon information and belief, T & J is the current owner and holder of fee simple title to Parcel 8 of the T & J Property.

Prayer for Relief

Wherefore, Plaintiff respectfully prays unto the Court:

1. That the Court find that the Amended Lis Pendens is invalid and void and of no effect on the Peachtree Property.

2. That the Court find that the McClam $2MM Mortgage, the Goetz Mortgage and the Hancock Mortgage have been satisfied and no longer constitute liens upon any portion of the T & J Property.

3. That the Court find that North Myrtle Beach has conveyed all of its right, title and interest in Parcel 8 of the T & J Property and has no remaining right, claim or interest in Parcel 8 of the T & J Real Property, and that the Court reform the North Myrtle Beach Deed to show that title to Parcel 8 of the T & J Property is fully vested in T & J.

4. That the Court ascertain and determine all amounts due on the Secured Obligations, including interest, principal, fees and costs advanced, and unreimbursed advancements paid to the holder of the Peachtree Superior Mortgage and the T & J Superior Mortgage pursuant to the Loan Documents, together with attorneys fees and costs of this action.

5. That the Peachtree Mortgage be declared a good and valid second mortgage lien on the Peachtree Property, subject only to the Peachtree Superior Mortgage and applicable due, past due and accruing property taxes, and that Plaintiff have judgment of foreclosure for the amounts found to be due and owing under the Peachtree Loan Documents, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiffs.

6. That the T & J Mortgage be declared a good and valid second mortgage lien on the T & J Property, subject only to the T & J Superior Mortgage and applicable due, past due, and accruing property taxes, and that Plaintiffs have judgment of foreclosure for the amounts found to be due and owing under the T & J Loan Documents, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiffs.

7. That the T & J Property and the Peachtree Property be sold according to law and the practice of the Court, free and clear of any liens and claims of others but subject to the Peachtree Superior Mortgage, the T & J Superior Mortgage and all due, past due and accruing Horry County property taxes, that the equity of redemption be barred, and that the proceeds of sale be applied as follows:

   First: to the costs and expenses of this action and such sale;

   Second: to the payment and discharge of all amounts due Plaintiffs under the Peachtree Loan Documents and the T & J Loan Documents, together with any payments made by Plaintiffs on account of the Peachtree Superior Mortgage and/or the T & J Superior Mortgage, and taxes or insurance premiums which may be due or which may be or have been paid by Plaintiffs and with Plaintiffs' costs and attorneys fees; and

   Third: the surplus, if any, be distributed according to law.

8. That Plaintiffs be granted judgment against T & J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers, and Peachtree, jointly and severally, in the amount of any deficiency remaining after sale of the T & J Property, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of the T & J Property.

9. That Plaintiffs be granted judgment against Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers, jointly and severally, in the amount of any deficiency remaining after sale of the Peachtree Property, such deficiency to be based upon the high bid at the judicial foreclosure sale regardless of any appraised value of the Peachtree Property.

10. For such other and further relief as may be just and proper.

June 7, 2007

Womble Carlyle Sandridge & Rice, PLLC

By: _____

W. Lindsay Smith (S.C. Bar # 5233)
Courtney S. Plyler (S.C. Bar #71687)
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Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership and Jericho State Capital Corporation of Florida, a Florida corporation,

Plaintiffs,

vs.

Case No. 07 CP __ - _____

T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development, LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers, LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T.J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, And McClam Investment Company, LLC,

Defendants.

894

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HORRY COUNTY
07 JUN -8 PM 2:23
CLERK OF COURT

NOTICE OF PENDENCY OF ACTION

Notice is hereby given pursuant to §§15-11-10, *et seq.* of the South Carolina Code of Laws that an action is now pending in this Court by the above named Plaintiffs against the above named Defendants for the foreclosure of the Mortgage between Jericho State Capital Corporation of Florida, a Florida corporation and Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, and recorded in the Office of the Register of Deeds for Horry County, South Carolina on July 25, 2006 in Mortgage Book 4629 at Page 272 (the ***"Peachtree Mortgage"***), and for the foreclosure of the Mortgage between Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership and Jericho State Capital Corporation of Florida, a Florida corporation and T&J Development of NMB, LLC, a South Carolina limited liability company, and recorded in the Office of the Register of Deeds for Horry County, South Carolina on October 9, 2006 in Mortgage Book 4724 at Page 685 (the ***"T & J Mortgage"***).

The mortgaged premises being foreclosed upon are described on attached Exhibit A.

June 7, 2007

Womble Carlyle Sandridge & Rice, PLLC

By: _____

W. Lindsay Smith (S.C. Bar #5233)
Courtney S. Plyler (SC Bar #71687)
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Attorneys for the Plaintiff

EXHIBIT A

The Peachtree Mortgage

PARCEL ONE

ALL AND SINGULAR those three (3) certain Lots in Socastee Township, Horry County, South Carolina, being shown on a Plat prepared for the Estate of John C. Spivey by J.F. Thomas, Surveyor, dated September 1, 1965, recorded November 16, 1965, in Plat Book 43 at Page 183, and designated thereon as Hursey Three Lots, to which Plat reference is made, being described as follows:

Beginning at a point on the inland Waterway the lands intersects with the Inland Waterway and Spivey Road, a right-of-way from which has been granted at a corner designated Concrete N; thence North: 78 degrees, 10 minutes West 225 feet to Concrete N; thence North 27 degrees 10 minutes East 250 feet to Pipe N; thence South 78 degrees 10 minutes East to Pipe N; thence South 27 degrees 10 minutes East 250 feet to the beginning corner.

Bounded on the North by lands of Ruth L. McClam; on the East by lands of Ruth L. McClam, on the South by the Northern margin of Intracoastal Waterway, and on the West by lands of Ruth L. McClam.

PARCEL TWO:

ALL AND SINGULAR, that lot of land in Socastee Township, Horry County, South Carolina, on the Northern side of the Inland Waterway and located near the Old Sweet Ditch, bounded and described as follows:

Commencing at an iron stake on the Northern bank of the Inland Waterway being a point where the Eastern bank of the Old Socastee Creek intersects the Inland Waterway, and running thence in a Northerly direction 21 degrees East 250 feet to an iron stake; thence Eastward 79 degrees East 100 feet to an iron stake; thence South 21 degrees East 250 feet to an iron stake on the Northern bank of the Inland Waterway; thence Westwardly along the Northern bank of the Inland Waterway 100 feet to the beginning corner.

Bounded on the North by other lands of Ruth L. McClam; on the East by other lands of Ruth L. McClam; on the South by the Inland Waterway; and on the west by other lands of Ruth L. McClam.

PARCEL THREE:

ALL AND SINGULAR, that certain tract or parcel of land in Socastee Township, Horry County, South Carolina, one hundred thirty-five (135) acres, more or less, having been platted and shown on a Plat prepared by J.F. Thomas, Surveyor, dated September 1, 1965. This 135 acres is situate North of the Intracoastal Waterway. The Plat is recorded in Plat Book 43, Page 183, in the Office of the Clerk of Court of Horry County, to which Plat reference is made.

The 135 acres is exclusive of the proposed highway area shown on the Plat above referenced to and is described as follows:

This property was heretofore conveyed by Ruth Ludlum McClam, et al to the Grand Strand Water and Sewer Authority by Deed dated 23 November, 1990; and recorded in Deed Book 1438, Page 163, in the office of the Clerk of Court for Horry County, South Carolina.

thereof is or may be subject to statutory regulation imposed by the South Carolina Coastal Zone Act of 1977, S.C. Code Ann. Sections 48-39-10 et. seq. (1988, Supp.), as amended by The South Carolina Beach Management Act, S.C. Code Ann. Section 48-39-270 et seq. (1988 Supp.), hereinafter collectively. called "the Acts". The Acts involve, and may subject the property to, the creation and existence of interim and final baselines, setback lines, the velocity zone and erosion rate, all as is more fully defined in the Acts. Part or all of the property is or may be located seaward of the setback line, the minimum setback line or interim baseline, and has an erosion rate, all as determined by the South Carolina Coastal Council, n/k/a Office of Ocean Coastal Resource Management. All or part of the property is or may be within the velocity zone as determined by the Federal Emergency Management Agency. The Acts may also restrict the Grantee's right to build, repair or rebuild structures on the property. No structure may be constructed seaward of the setback line without a permit issued by the South Carolina Coastal Council, n/k/a Office of Ocean Coastal Resource Management. Pursuant to the Acts, the locations of the baselines and interim and final setback lines are subject to change. The methodology utilized in determining the exact location of the setback lines and baselines on the property and the currently applicable erosion rate may be obtained from the South Carolina Coastal Council, n/k/a Office of Ocean Coastal Resource Management. The methodology described above must be utilized in a case-by-case, property-by-property manner in order for an exact, surveyed determination to be made of the location of the baselines and setback lines, or the velocity zone, the effect of such regulation on the property, or the accuracy of the foregoing disclosure.

Parcel Three:

Unit 310, Building 3401, of Pier Watch Villas Horizontal Property Regime, established pursuant to the Master Deed of Pier Watch Villa Horizontal Property Regime, dated January 31, 2006 and recorded March 17, 2006 in Deed Book 3064 at Page 1229, and all Exhibits and Amendments thereto (the "Master Deed"), records of Horry County, South Carolina.

SUBJECT to all of the provisions of the aforesaid Master Deed and all Exhibits and Amendments thereto.

TOGETHER with all of the appurtenances thereto according to said Master Deed, and Exhibits and Amendments, thereto, and the Grantee assumes and agrees to observe and perform its obligations under the Master Deed, and all Exhibits and Amendments thereto, including, but not limited to, the payment of assessments of the By-Laws of Pier Watch Villas Homeowners' Association.

Being a portion of the premises conveyed to Pier Watch Villas, LLC by Deed from Ship Ahoy Motel Partnership, dated September 26, 2003, and recorded in Deed Book 2647 at Page 0353, public records of Horry County, South Carolina.

Parcel Four:

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in the County of Horry, State of South Carolina, and near the Atlantic Ocean, shown and designated as Lot No. 2 in Block 7, Windy Hill Beach, Subdivision, as shown on a plat or may made by N.C. Hughes, Jr., Engineer, revised March 25, 1947, and which plat or map is recorded in the

Office of the Clerk of Court for Horry County, South Carolina, and reference to which is hereby craved as forming a part and parcel hereof.

TMS: 156-03-10-006

Parcel Five:

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the County of Horry, State of South Carolina, and near the Atlantic Ocean, shown and designated as Lot No. 3, in Block 7, on a plat or map made by N.C. Hughes, Jr., Engineer, revised March 25, 1947, which plat or map is recorded in the Office of the Clerk of Court for Horry County, South Carolina.

TMS: 156-03-10-005

Parcel Six:

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, City of North Myrtle Beach, Windy Hill Beach Section, designated as LOT FOUR (4), BLOCK SEVEN (7), of WINDY HILL BEACH as shown on a map or plat thereof prepared by N.C. Hughes, Jr., Engineer, revised the 25th day of March, 1947 and recorded In the Office of the Clerk of Court for Horry County in Plat Book 5-A at Page 111, reference to which is craved as forming a part of these presents.

Parcel Seven:

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, Windy Hill Beach Section, City of North Myrtle Beach, designated as LOT FIVE (5), BLOCK SEVEN (7), WINDY HILL BEACH CORPORATION PROPERTY, as shown upon map or plat thereof recorded in the Office of the Clerk of Court for Horry County in Plat Book 5-A at Page 111.

Parcel Eight:

All and singular, that certain piece, parcel or lot of land shown and designated as Lot A on that certain Plat of 39th Avenue and Lake Drive, Lots A through I inclusive (9 lots), prepared for KLR Investments, LLC by Perry Land Surveying, Inc., dated November 4, 2002, revised February 17, 2003 and recorded May 19, 2003 in Plat Book 189 at Page 231, records of Horry County, reference to said plat hereby is craved.

TOGETHER with a non-exclusive easement for ingress/egress and utility placement and maintenance above, along, and below that "22' Ingress/Egress and Utility Easement" as shown on the referenced plat. Moreover, the Grantor reserves a non-exclusive easement for ingress/egress and utility placement and maintenance above, along and below that "22' Ingress/Egress & Utility Easement" as shown on the referenced plat.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

C.A. No. 07-CP-26-3579

Jericho All-Weather Opportunity Fund, L.P., a Delaware limited partnership, and Jericho State Capital Corporation of Florida, a Florida corporation

Plaintiffs,

vs.

T & J Development of NMB, LLC, a South Carolina limited liability company, a/k/a T & J Development LLC, Peachtree Properties of North Myrtle Beach, LLC, a South Carolina limited liability company, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers LLC, a South Carolina limited liability company, Glenn Michaels, Manny Pappus, T. J. Ungaro, North Myrtle Beach Investment Group, LLC, Horst Goetz, Durward W. Hancock, Hortense G. Hancock, and McClam Investment Company, LLC,

Defendants.

TRANSCRIPT OF HEARING

FILED
HORRY COUNTY
07 NOV -7 AM 9:10
CLERK OF COURT

BY THE COURT:

This matter is before the Court pursuant to an Order of Reference filed with the Court on October 3, 2007, wherein and whereby all causes of action in this matter were referred to the undersigned, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being taken directly to the South Carolina Supreme Court or the South Carolina Court of Appeals, as provided by the South Carolina Appellate Court Rules. This hearing is conducted on October 30, 2007 at 2:30 p.m. at Chambers, attended by S. Sterling Laney, III of Womble Carlyle Sandridge & Rice, PLLC, attorneys for the Plaintiffs and Robert H. Gwin, II of Gwin Law Offices, LLC attorney for Defendants, T&J Development of NMB LLC, Peachtree Properties of North Myrtle Beach, LLC, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers LLC. All other Defendants have been notified as to the date and time of this hearing as evidenced by the Certificate of Service dated

October 16, 2007, but are not in attendance. Pursuant to the Court's review of the file in this case, it appears that the Notice of Pendency of Action, Summons and Complaint in this matter were all filed with the Clerk of Court for Horry County on June 8, 2007. Service was made upon Defendants as shown by Affidavits of Service on file in this action. Defendants Horst Goetz, T. J. Ungaro and Glenn Michaels have not answered, appeared or otherwise pleaded within the time required by the Summons and, pursuant to Amended Affidavit of Default on file in this case, became in default on August 4, 2007, July 30, 2007 and August 18, 2007 respectively. Defendant Glenn Michaels has now retained the services of Charles S. Bernstein of Bernstein and Bernstein, PA who has discussed the matter with Plaintiff's counsel and asked that Defendant Glenn Michaels' rights as a subordinate mortgage holder be protected as allowed by applicable law. It appears that this Court has jurisdiction of the parties and of the subject matter of this action. Mr. Laney, are you ready to proceed?

BY MR. LANEY:

Yes, Your Honor. May it please the Court, I am Sterling Laney of the law firm of Womble Carlyle Sandridge & Rice, PLLC, attorneys for the Plaintiffs in this action. This action is a foreclosure in which the Plaintiffs are seeking to foreclose two separate mortgages and related loan documents all of which pertain to real estate located in Horry County, South Carolina. The Plaintiffs are currently seeking a deficiency judgment against the Defendants and therefore are currently asking that the public sale of the mortgaged property remain open for 30 days after the Sales Day in accordance with applicable South Carolina law However, Plaintiffs are hereby reserving their right to waive said deficiency judgment by providing this Court with written notice of such waiver, along with a copy of the notice to Defendants T&J, Peachtree, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, and Ocean Developers. If Plaintiffs decide to waive their right to a deficiency judgment, the public sale of the mortgage property will be final on the Sales Date. At this time, I would like to introduce into the record the original loan documents with leave to substitute copies evidencing and securing the Defendants' indebtedness to the Plaintiffs, with leave to substitute into the record copies of the original documents following the Court's acceptance of the originals as well as the Court's granting Plaintiffs' request to be allowed to reserve their rights in regards to waiving any deficiency judgment.

BY THE COURT:

Your requests are granted.

BY MR. LANEY:

On July 24, 2006, for value received, Defendant Peachtree Properties of North Myrtle Beach, LLC (hereinafter referred to as "Defendant Peachtree") executed and delivered to Plaintiff Jericho State Capital Corporation of Florida, a Florida corporation (hereinafter referred to as "Jericho Florida") a promissory note in the original principal amount of $4,263,888.00. This note shall be hereinafter referred to as the "Peachtree Note". Pursuant to the terms and conditions of the note, Defendant Peachtree promised to pay to Plaintiff Jericho Florida said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein, and all expenses of collection or enforcement of payment of the Peachtree Note, including, but not limited to, reasonable attorney's fees and expenses. I would offer the original Peachtree promissory note as Exhibit 1.

BY THE COURT:

The Peachtree Note is received into evidence as Plaintiffs' Exhibit 1.

BY MR. LANEY:

In order to secure the payment of the Peachtree Note, for value received, Peachtree granted to Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Mortgage"), covering certain real property, described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon, and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "Peachtree Property"). The Peachtree Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on July 25, 2006 in Mortgage Book 4629 at Page 277. I would offer the original Peachtree Mortgage as Exhibit 2.

BY THE COURT:

The Peachtree Mortgage is received into evidence as Plaintiffs' Exhibit 2.

BY MR. LANEY:

By its terms, the Peachtree Mortgage additionally secures any future or additional advances made by Jericho Florida at its option to Peachtree, up to a maximum principal secured indebtedness of $8,527,776.00, plus interest and any disbursements made for the payment of taxes, levies, or insurance on the Peachtree Property, plus any sums expended to cure a

default under the Peachtree Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Jericho Florida in connection with enforcing the Peachtree Note and Peachtree Mortgage, or incurred in connection with any foreclosure action or other proceeding brought by Jericho Florida to enforce and protect its rights and interest under the Peachtree Mortgage and Peachtree Note, whether incurred before or after any decree of judgment of foreclosure.

Additionally, by its terms, the Peachtree Mortgage secures the covenant of Peachtree not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the Peachtree Property with any such mortgage or lien placed on the Peachtree Real Property to be deemed void *ab initio*. The Peachtree Mortgage further recites that it is subject to a first mortgage upon the Peachtree Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $18,520,000.00 (the "Peachtree Superior Mortgage").

In order to further secure Peachtree's obligations to Jericho Florida, Peachtree granted to Jericho Florida an Assignment of Leases and Rents dated July 24, 2006 (the "Peachtree Assignment"). The Peachtree Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on September 5, 2006, in Deed Book 3152 at Page 472. I would offer the Peachtree Assignment as Exhibit 3.

BY THE COURT:

The Peachtree Assignment is received into evidence as Plaintiffs' Exhibit 3.

BY MR. LANEY:

In order to further evidence the grant of a security interest in the personal property and fixtures described in the Peachtree Mortgage and Peachtree Assignment, Jericho filed a UCC-1 Financing Statement on July 25, 2006 in the office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 333, that identifies Peachtree as debtor and Jericho Florida as secured party (the "Peachtree UCC"). I would offer the Peachtree UCC as Exhibit 4.

BY THE COURT:

The Peachtree UCC is received into evidence as Plaintiffs' Exhibit 4.

BY MR. LANEY:

In order to further secure Peachtree's obligations to Jericho Florida, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and T & J (collectively, the "Peachtree Guarantors," and individually, a "Peachtree Guarantor") granted to Jericho Florida a Guaranty, dated July 24, 2006 (the "Peachtree Guaranty"), pursuant to which each Peachtree Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Jericho Florida prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by Peachtree of all covenants and conditions set forth in the Peachtree Note, the Peachtree Mortgage, the Peachtree Assignment, the Peachtree UCC, and any and all other documents evidencing or securing the obligations set forth therein (collective, the "Peachtree Loan Documents"), and the payment of any and all expenses paid or incurred by Jericho Florida in collecting any or all of the sums due and in enforcing its rights under the Peachtree Guaranty or the Peachtree Loan Documents, including, but not limited to, attorneys fees. I would offer the Peachtree Guaranty as Exhibit 5.

BY THE COURT:

The Peachtree Guaranty is received into evidence as Plaintiffs' Exhibit 5.

BY MR. LANEY:

On October 30, 2006, Peachtree gave to Defendant Glenn Michaels a Mortgage of Real Property upon the Peachtree Property purporting to secure the principal amount of $1,500,000.00, which mortgage was recorded on November 7, 2006 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4762 at page 785 (the "Michaels Mortgage").

As evidenced by the date of the Michaels Mortgage, as well as the date, book and page number of the Michaels Mortgage recording, the Michaels Mortgage was granted and recorded after the Peachtree Mortgage was recorded. Further, it appears from the uncontroverted testimony of Glenn Chwatt, President of Plaintiff Jericho Florida that the Michaels Mortgage was additionally granted without the knowledge or consent of Jericho Florida. Accordingly, the Michaels Mortgage is subordinate to lien of the Peachtree Mortgage.

Defendant Michaels is in default as shown by the Amended Affidavit of Default on file and dated October 16. 2007. However, attorney Charles Bernstein has entered an appearance on behalf of Defendant Michaels and answered the Complaint. In his answer Defendant Michaels joins in the request that the Michaels Mortgage be considered a subordinate mortgage to the Peachtree Mortgage.

Based on the above information, we hereby move this Court for an Order indicating that the Michaels Mortgage should be considered subordinate to the lien of the Peachtree Mortgage with all rights and interest of such subordinate mortgage holder.

BY THE COURT:

Based on the facts before me, I hereby grant your Motion and Order that the Michaels Mortgage shall be considered subordinate to the lien of the Peachtree Mortgage and given all rights and interest warranted to a subordinate mortgage holder.

BY MR. LANEY:

On March 9, 2007, Defendants Manny Pappus ("Pappas") and T. J. Ungaro ("Ungaro") filed an Amended Lis Pendens (the "Amended Lis Pendens") in the Office of the Clerk of Court for Horry County South Carolina in File No. 06-LP-126 purporting to affect the title to the Peachtree Property.

No summons or complaint was filed by Defendants Pappus and Ungaro in connection with the Amended Lis Pendens within twenty (20) days after such filing or at any time subsequent thereto.

Based on the above facts, as well as the uncontroverted testimony of Plaintiffs, as set forth in their Affidavits, any interest claimed by Defendants Pappas and Ungaro should be considered null and avoid, and the Amended Lis Pendens should be considered of no consequence to this action. We hereby move this Court for an Order indicating that the Amended Lis Pendens is of no consequence to this action and should be cancelled of record in the Office of the Clerk of Court for Horry County.

BY THE COURT:

Based on the facts before me and the law of the State of South Carolina governing the time in which to file a Summons and Complaint foreclosing upon the interest set forth in a Lis Pendens, I hereby grant Plaintiffs' Motion and Order that the Amended Lis Pendens shall be cancelled of record in the Office of the Clerk of Court for Horry County.

BY MR. LANEY:

On October 6, 2006, for value received, T & J Development of NMB, LLC (hereinafter referred to as "T & J") executed and delivered to Plaintiffs Jericho Florida and Jericho All-Weather Opportunity Fund, L.P. ("Jericho") a promissory note in the original principal amount of $8,000,000.00 (the "T & J Note"), pursuant to which T & J promised to pay Plaintiffs said principal amount, together with interest on the unpaid principal balance as set forth therein, late charges as provided therein and all expenses of collection or enforcement of payment of the T & J Note, whether or not suit is brought, and if suit is brought, then through all appellate actions, including, but not limited to, reasonable attorneys' fees and expenses. I offer the T & J Note as Exhibit 6.

BY THE COURT:

The T & J Note is received into evidence as Plaintiffs' Exhibit 6.

BY MR. LANEY:

In order to secure the payment of the T & J Note, for value received, T & J granted to Jericho and Jericho Florida a Mortgage, Security Agreement and Assignment of Leases and Rents dated October 6, 2006 (the "T & J Mortgage"), covering certain real property described more fully therein, along with any improvements, structures and buildings and any alterations thereto, located in Horry County, South Carolina, all fixtures thereon and all other contracts, contract rights, leases, rents and other personal property described more fully therein (collectively, the "T & J Property"). Individual portions of the T & J Property are sometimes referred to herein and in the T & J Mortgage as Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, Parcel 7 and Parcel 8. The T & J Mortgage was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Mortgage Book 4724 at Page 685. I offer the T & J Mortgage as Exhibit 7.

BY THE COURT:

The T & J Mortgage is received into evidence as Plaintiffs' Exhibit 7.

BY MR. LANEY:

By its terms, the T & J Mortgage additionally secures any future or additional advances made by Plaintiffs at its option to T & J, up to a maximum principal secured indebtedness of $16,000,000.00, plus interest and any disbursements made for the payment of taxes, levies or insurance on the T & J Property, plus any sums expended to cure a default under the T & J Superior Mortgage defined therein, plus all attorneys' fees and expenses incurred by Plaintiffs in connection with enforcing the T & J

Note and T & J Mortgage, or incurred in connection with any foreclosure action or other proceedings brought by Plaintiffs to enforce and protect their rights and interest under the T & J Mortgage and T & J Note, whether incurred before or after any decree or judgment of foreclosure.

By its terms, the T & J Mortgage secures the covenant of T & J not to create or suffer any mortgage, lien or encumbrance, directly or indirectly, with respect to all or any portion of the T & J Property with any such mortgage or lien placed on the T & J Property to be deemed void *ab initio*. The T & J Mortgage further recites that it is subject to a first mortgage upon the T & J Property in favor of R. E. Loans, LLC, a California limited liability company, securing a note in the principal sum of $12,950,000.00 and a first mortgage upon Parcel 8 of the T & J Property in favor of First Palmetto Savings Bank FSB securing a note in the principal amount of $1,100,000.00 (collectively, the "T & J Superior Mortgages").
In order to further secure T & J's obligations to Plaintiffs, T & J granted to Plaintiffs its Assignment of Leases and Rents dated October 6, 2006 (the "T & J Assignment"). The T & J Assignment was recorded in the Office of the Register of Deeds for Horry County, South Carolina, on October 9, 2006, in Deed Book 3170 at Page 419. I offer the T & J Assignment as Exhibit 8.

BY THE COURT:

The T & J Assignment is received into evidence as Plaintiffs' Exhibit 8.

BY MR. LANEY:

In order to further secure T & J's obligations to Plaintiffs, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix, Ocean Developers and Peachtree (collectively, the "T & J Guarantors," and individually, a "T & J Guarantor") granted to Plaintiffs a Guaranty, dated October 6, 2006 (the "T & J Guaranty"), pursuant to which each T & J Guarantor unconditionally, jointly, severally and irrevocably guaranteed to Plaintiffs the prompt and complete payment when due of the principal, together with any and all interest and other sums due and payable, and the performance, observance and discharge by T & J of all covenants and conditions set forth in the T & J Note, the T & J Mortgage, the T & J Assignment and any and all other documents evidencing or securing the obligations set forth therein (collectively, the "T & J Loan Documents"), and the payment of any and all expenses paid or incurred by Plaintiffs in collecting any or all of the sums due and in enforcing any rights under the T & J Guaranty or the T & J Loan Documents, including, but not limited to, attorneys fees. I offer the T & J Guaranty as Exhibit 9.

BY THE COURT:

The T & J Guaranty is received into evidence as Plaintiff's Exhibit 9.

BY MR. LANEY:

On July 24, 2006, T & J gave a Mortgage covering parcels 4, 5, 6, and 7 of the T & J Property to Defendant McClam Investment Company, LLC ("McClam") in the principal amount of $2,942,286.09 that was recorded on July 25, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4629 at Page 340 (the "McClam $2MM Mortgage").

It appears from the testimony in this matter and the Answer on file from Defendant McClam, that the debt secured by the McClam $2MM Mortgage was satisfied at the closing of the T & J Loan and the McClam $2MM Mortgage is no longer a valid lien on Parcels 4, 5, 6 and 7 of the T & J Property and should be cancelled of record.

Based on the above, Plaintiffs hereby move this Court for an Order indicating that the McClam $2MM Mortgage is cancelled of the record and no longer considered a valid mortgage lien on Parcels 4, 5, 6 and 7 of the T & J Property.

BY THE COURT:

Based on the facts before me and the pleadings in this case, Plaintiffs' Motion is granted and it is ordered that the McClam $2MM Mortgage shall be cancelled of record in the Office of the Register of Deeds for Horry County and no longer considered a valid mortgage lien on Parcels 4, 5, 6 and 7 of the T & J Property.

BY MR. LANEY:

On January 4, 2004, T & J gave a Mortgage covering Parcels 6 and 7 of the T & J Property to Defendant Horst Goetz ("Goetz") in the principal amount of $506,250.00 that was recorded on January 7, 2004 in the Office of the Register of Deeds for Horry County in Mortgage Book 3534 at page 951 (the "Goetz Mortgage").

Defendant Goetz is in default as shown by the Amended Affidavit of Default on file and dated October 16, 2007.

It appears from the uncontroverted testimony in this matter as provided by Plaintiffs in their Affidavits and the Answer on file from Defendant McClam that the debt secured by the Goetz Mortgage was satisfied at the closing of the T & J Loan and the Goetz Mortgage should no longer a valid mortgage lien on Parcels 6 and 7 of the T & J Property and should be

cancelled of record in the Office of the Register of Deeds for Horry County.

Based on the above, Plaintiffs hereby move this Court for an Order indicating that the Goetz Mortgage is cancelled of the record and no longer considered a valid mortgage lien on Parcels 6 and 7 of the T & J Property.

BY THE COURT:

Based on the facts before me and the pleadings in this case, Plaintiffs' Motion is granted and it is ordered that the Goetz Mortgage shall be cancelled of record in the Office of the Register of Deeds for Horry County and no longer considered a valid mortgage lien on Parcels 6 and 7 of the T & J Property.

BY MR. LANEY:

On March 4, 2004, T & J gave a mortgage covering parcel 8 of the T & J Property to Defendants Durward W. Hancock and Hortense G. Hancock in the principal amount of $200,000.00 that was recorded on March 5, 2004 in the Office of the Register of Deeds for Horry County in Mortgage Book 3579 at Page 1469 (the "Hancock Mortgage").

It appears from the uncontroverted testimony of Plaintiffs, as well as the Answer of Defendants Hancock in this matter, that the debt secured by the Hancock Mortgage was satisfied at the closing of the T & J Loan and the Hancock Mortgage is no longer a valid lien on Parcel 8 of the T & J Property and should be cancelled of record.

Based on the above, Plaintiffs hereby move this Court for an Order indicating that the Hancock Mortgage is cancelled of the record and no longer considered a valid mortgage lien on Parcel 8 of the T & J Property.

BY THE COURT:

Based on the facts before me and the pleadings in this case, Plaintiffs' Motion is granted and it is ordered that the Hancock Mortgage shall be cancelled of record in the Office of the Register of Deeds for Horry County and no longer considered a valid mortgage lien on Parcel 8 of the T & J Property.

BY MR. LANEY:

On October 6, 2006, T & J gave a Mortgage, Assignment of Rents and Security Agreement covering the T & J Property to McClam in the

principal amount of $850,000.00 that was recorded on October 9, 2006 in the Office of the Register of Deeds for Horry County in Mortgage Book 4724 at Page 744 (the "McClam $850M Mortgage").

From the testimony of Plaintiffs the lien of the McClam $850M Mortgage was granted without the knowledge or consent of Plaintiffs. It further appears from the information contained in the public records from the Office of the Register of Deeds of Horry County that the McClam $850M Mortgage was recorded after the T & J Mortgage and, if not found to void *ab initio*, since it was granted without the knowledge or consent of Plaintiffs, that it should be considered subordinate to lien of the T & J Mortgage, which fact is also supported by the Answer on file by Defendant McClam.

Plaintiffs hereby move this Court for an Order indicating that the McClam $850M Mortgage is subordinate to the lien, rights and interests of the T & J Mortgage with all rights and interest afforded to a subordinate mortgage holder.

BY THE COURT:

Based on the pleadings in this matter and a review of the book and page numbers on public record as maintained in the Office of the Register of Deeds for Horry County, it appears that the McClam $850M Mortgage was granted and recorded after the T & J Mortgage was granted and recorded, and therefore the McClam $850M Mortgage is subordinate to the lien, rights and interests of the T & J Mortgage and should be afforded all rights attendant to being a subordinate mortgage holder.

BY MR. LANEY:

As a condition to Plaintiff's issuing to T & J the T & J Loan, T & J and Defendant Peachtree Properties of North Myrtle Beach, LLC ("Peachtree") granted to Plaintiffs a Cross-Collateralization Agreement dated October 6, 2006 (the "Cross-Collateralization Agreement") whereby T&J and Peachtree each agreed that the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents as those terms are defined in the Complaint and the T&J Note, T&J Mortgage and other T&J Loan Documents as those terms are defined in the Complaint are and will be cross-collateralized and cross-defaulted with one another so that the Peachtree Mortgage, Peachtree Assignment, T&J Mortgage and T&J Assignment shall secure payment and performance of all of the Peachtree Note and T&J Note and that a default under any of the Peachtree Loan Documents shall also constitute a default under all of the T&J Loan Documents. A true and correct copy of the Cross-Collateralization Agreement is attached to the Complaint as Exhibit 10.

BY THE COURT:

The Cross-Collateralization Agreement is received into evidence as Plaintiff's Exhibit 10.

BY MR. LANEY:

On or about March 14, 2007, Plaintiff Jericho Florida gave written notice to Peachtree of its receipt of notification from the holder of the Peachtree Superior Mortgage of Peachtree's failure to make payment of a total past due amount of $708,600.00 due under the Peachtree Superior Mortgage, which notice required Peachtree to cure such default under the Peachtree Superior Mortgage. On or about March 23, 2007, Plaintiff Jericho Florida gave additional written notice to Peachtree of its failure to pay such past due amount and advised Peachtree of Plaintiff Jericho Florida's intent to cure such Peachtree Superior Mortgage default by paying said past due amount on March 26, 2007, and further advising Peachtree that in the event that it failed to reimburse Plaintiff Jericho Florida in full within five days following the date of Plaintiff Jericho Florida's payment of the past due amount, Peachtree would thereupon be in default under the terms of the Peachtree Loan Documents. Plaintiff Jericho Florida paid the sum of $713,152.50 to the holder of the Peachtree Superior Mortgage on March 26, 2007 to cure Peachtree's defaults under the Peachtree Superior Mortgage, and Peachtree has thereafter failed or refused to reimburse all or any portion thereof to Plaintiff Jericho Florida. I offer the foregoing letters dated March 14, 2007 and March 23, 2007 (the "Peachtree Demand Letters") as Exhibit 11.

BY THE COURT:

The Peachtree Demand Letters are received into evidence as Plaintiff's Exhibit 11.

BY MR. LANEY:

If it may please the Court, I would like to also advise that we have conducted a title examination of the public records maintained by Horry County pertaining to the Defendants and to the mortgaged property, and we find no other parties holding or claiming any interest of record in and to any of the Peachtree Property or T & J Property as described in the Peachtree Mortgage and/or the T & J Mortgage. We therefore advise the Court that the Peachtree Mortgage is and remains a valid second mortgage lien upon the Peachtree Property, and the T & J Mortgage is and remains a valid second mortgage lien upon the T & J Property, subject only to the

interests of the Peachtree Superior Mortgage and the T & J Superior Mortgages, respectively.

BY THE COURT:

So noted.

BY MR. LANEY:

I would further call the attention of the Court to the applicable provisions of the Peachtree Mortgage and T & J Mortgage whereby each mortgage secures payment of all principal, interest due under the Peachtree Note and the T & J Note, respectively, all sums advanced by the Plaintiffs to or for the benefit of the Defendants Peachtree and T & J, respectively, pursuant to the Peachtree Mortgage and the T & J Mortgage, and reserves, deposits and escrows (regardless of how denominated) required by the Plaintiffs of the Defendants Peachtree and T & J under the terms of the respective mortgages, together with all costs and expenses of every nature and kind incident to the collection of the indebtedness evidenced thereby and the enforcement and protection of the lien of these mortgages, including without limitation, reasonable attorneys' fees, costs and expenses incurred in this action. We would further call the attention of the Court to the provisions of the Peachtree Note and T & J Note that stipulate that upon any failure by the Defendants Peachtree and T & J to pay any installment of principal, interest or any other sums due under the Peachtree Note, T & J Note, Peachtree Mortgage and T & J Mortgage as well as the other Peachtree loan documents and T. & J loan documents when due, or upon non-compliance of any of the conditions and requirements in the mortgages, then the whole principal sum, accrued interest, and other sums shall at the option of the legal holder become at once due and payable without notice, and collectible by foreclosure.

BY THE COURT:

So noted.

BY MR. LANEY:

I would like to offer into evidence at this time the Affidavit of Glenn M. Chwatt, President of Jericho State Capital Corporation of Florida, and the Affidavit of Scott Svirsky, President of Svirsky Asset Management Group, which is one of the three general partners of Plaintiff Jericho All-Weather Opportunity Fund, which sets forth the occurrences of default on the part of the Defendant Peachtree and Defendant T & J under the terms of the foregoing Peachtree Note, Peachtree Mortgage and other Peachtree loan documents and pursuant to the cross-collateralization agreement, constitute defaults under the T & J Note, T & J Mortgage and other T & J

Loan Documents, as well as the election of the Plaintiffs to accelerate payment on the Peachtree Note and T&J Note and to foreclose the Peachtree Mortgage and T & J Mortgage, and the sums which are and shall be due and payable under the terms of the Peachtree Note and T & J Note and related Peachtree and T & J loan documents as defined in the Complaint on record, escrow payments and accrued late charges as of December 3, 2007 sales day, including principal, interest and unreimbursed payments to superior mortgage holders and for insurance premiums, accrued interest at each respective Note's default interest rate, accrued escrow payments, and accrued late charges.

BY THE COURT:

The Affidavit of Glenn M. Chwatt is received into evidence as Plaintiff's Exhibit 12, and the Affidavit of Scott Svirsky is received into evidence as Plaintiff's Exhibit 13.

BY MR. LANEY:

We wish to bring to the Court's attention the pertinent provisions of both the Peachtree Note and T & J Note, the Peachtree Mortgage and T & J Mortgage, the Cross-Collateralization Agreement and the other Peachtree and T & J Loan Documents which provided that the above-referenced actions and failure to make payments by Defendants Peachtree, the Peachtree Guarantors, T & J and the T & J Guarantors constitute events of default under the Peachtree Note, Mortgage and other Peachtree Loan Documents, as well as the T & J Note, Mortgage and other T & J Loan Documents and entitle Plaintiffs to exercise all rights and remedies as set forth in the Peachtree Note, Mortgage and other Loan Documents and the T & J Note, Mortgage and other Loan Documents, including the right to sell by judicial foreclosure the Peachtree Property and the T & J Property.

BY THE COURT:

It is so noted. In addition it is ordered that the Peachtree Note and the T & J Note be considered in default and entitle Plaintiffs to exercise all rights and remedies as set forth in the terms and conditions of the Peachtree Note, Peachtree Mortgage and other Peachtree loan documents and the T & J Note, T & J Mortgage and other T & H loan documents, including, but not limited to, sale by foreclosure of the Peachtree Property and the T & J Property.

BY MR. LANEY:

We wish to further bring the attention of the Court to the pertinent provisions of both the Peachtree and T & J Notes, the Peachtree and T & J

Mortgages and the other Peachtree and T & J loan documents which provide that the attorneys' fees and costs incurred by the Plaintiffs in connection with any actions thereon, including foreclosure of the Mortgages, shall form a part of the indebtedness due thereunder and be collectible as a part thereof.

BY THE COURT:

So noted.

BY MR. LANEY:

In connection therewith, we ask that the Court approve a fee for the Plaintiffs' attorneys for the handling of this action of $80,000.00, which we assert represents a reasonable fee in light of the time expended, the services rendered, and the matters at stake in this action.

BY THE COURT:

The requested fee appears to be reasonable and is hereby granted.

BY MR. LANEY:

The Plaintiffs have further incurred taxable expenses to date in connection with this action, including $150.00 for the filing fee for the complaint, $125.00 for the reference fee to this Court, and $25.00 motion fee. Additionally, the Plaintiffs will incur advertising costs for the notice of sale in an indeterminable amount and would ask that these also be includable in the final taxable costs of this action.

BY THE COURT:

So approved.

BY MR. LANEY:

We wish to further bring the attention of the Court to the pertinent provisions of the Peachtree and T & J Notes, the Peachtree and T & J Mortgage and other Peachtree and T & J Loan Documents which provide that Defendants Peachtree, T & J and the Peachtree and T & J Guarantors have waived their statutory rights of appraisal.

BY THE COURT:

So noted.

BY MR. LANEY:

Based upon the foregoing enumerated components, and assuming no payments to the Plaintiff prior to the project sales day of December 3, 2007, the total sum that will be due to the Plaintiffs as of December 3, 2007, will be the total sum of $17,433,198.70, plus the costs of advertising the Notice of Sale, and the prepayment premium that will be calculated pursuant to the note upon the actual sum prepaid as a result of the public sale of the property, all of which the Plaintiffs are entitled to under the terms of the Peachtree Note, Peachtree Mortgage and other Peachtree Loan Documents, the T & J Note, the T & J Mortgage and other T & J Loan Documents.

BY THE COURT:

The foregoing sums are hereby approved.

BY MR. LANEY:

In summary, the Plaintiffs have presented all necessary facts to this Court to entitle the Plaintiffs to have the Peachtree Mortgage and the T & J Mortgage foreclosed and the Peachtree Property and T & J Property sold at public sale on December 3, 2007, or such other sales day as the Court determines just and property, with the proceeds of the sale to be applied to the payment and discharge of the aforementioned sums which are due and owing to Plaintiffs from Defendants, Peachtree, T&J and the Peachtree and T&J Guarantors on the Peachtree Note, Mortgage and other Peachtree Loan Documents and the T&J Note, T&J Mortgage and other T&J Loan Documents and final accounting following confirmation of such sale. The Plaintiffs request that this Court order said foreclosures and sale and that the sale be conducted in normal fashion as required by law, and that since Plaintiffs are currently requesting a deficiency judgment, that the bidding on such sale remain open for a period of thirty (30) days, unless this Court is notified in writing by Plaintiffs that the deficiency judgment is being waived, along with a copy that notice of such waiver is also being provided to Defendants Peachtree, T&J, Jeffrey Shoup, Joyce Shoup, David Hix, Paula Hix and Ocean Developers, and that if the Plaintiffs are the successful bidder for a sum not to exceed the amount due to it as determined by this Court, it shall be required to pay to the Court only the amount of the taxable costs and expenses of the sale, with the balance of its debt to be credited against such indebtedness.

The Plaintiffs request that the Court's order indicate that an entry of judgment against Defendants Peachtree and the Peachtree Guarantors will be entered in the amounts set forth as due and owing under the Peachtree

Note and Mortgage in the affidavit of Glenn Chwatt and against Defendants T & J and the T & J Guarantors in the amounts set forth as due and owing under the T & J Note and Mortgage in the affidavits of Scott Svirsky and Glenn Chwatt, less any amount recovered by Plaintiffs by the judicial foreclosure sale of the Peachtree Property and the T & J Property to be held December 3, 2007 or at such other date as the Court deems just and proper.

BY THE COURT:

Such requests are appropriate and are hereby granted.

BY MR. LANEY:

This then concludes the Plaintiffs' case unless the Court shall have any further questions.

BY THE COURT:

No further questions. This hearing is concluded and the record is now hereby closed.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CIVIL ACTION NO. 2009-CP-26-9968**
Jericho All-Weather Opportunity Fund, L.P. and Jericho State Capital Corporation of Florida,	)	
Plaintiffs,	)	
vs.	)	**STIPULATION OF DISMISSAL**
Horry County, South Carolina, and the South Carolina Department of Transportation,	)	
Defendants.	)	

FILED
HORRY COUNTY
2010 MAR 18 AM 8:52
MELANIE HUGGINS-WARREN
CLERK OF COURT

Insofar as the South Carolina Department of Transportation, as agent for Horry County, South Carolina, has filed an eminent domain action bearing Civil Action Number 2009-CP-26-11956, and which action resolves the issues raised in the present declaratory judgment matter, Plaintiffs Jericho All-Weather Opportunity Fund, L.P. and Jericho State Capital Corporation of Florida desire at this time to dismiss their Complaint against Defendants Horry County, South Carolina and the South Carolina Department of Transportation without prejudice pursuant to Rule 41(a)(1) of the *South Carolina Rules of Civil Procedure*; and

THEREFORE, with the consent of the Defendants above-named, it is hereby stipulated that Plaintiffs' Complaint against the Defendants above-named is hereby dismissed without prejudice.

*** Signature Pages Follow ***

I so stipulate this 11th day of March, 2010

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578
(843) 448-2400
Counsel for Plaintiffs

By: _____
Howell V. Bellamy, Jr., SCB #00642
Robert S. Shelton, SCB #68543
Counsel for Plaintiffs

I so stipulate this 14th day of March, 2010.

THOMPSON & HENRY, P.A.
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
(843) 692-2628
Counsel for Defendant Horry County, South Carolina

By: Emma Ruth Brittain
Emma Ruth Brittain, Esq.

I so stipulate this 15th day of March, 2010.

SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION
Post Office Box 191
Columbia,. South Carolina 29202
(803) 737-1347
Counsel for Defendant South Carolina Department of Transportation

By: _____
Hart Baker, Esq.

Entered on Docket
February 03, 2012
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

FRIEDMAN DUMAS & SPRINGWATER LLP
CECILY A. DUMAS (S.B. NO. 111449)
ROBERT E. CLARK (S.B. NO. 245882)
33 New Montgomery Street, Suite 290
San Francisco, CA 94105
Telephone: (415) 834-3800
Facsimile: (415) 834-1044

Counsel to Debtor and Debtor in Possession
MORTGAGE FUND '08 LLC

MACDONALD FERNANDEZ
IAIN A. MACDONALD (S.B. NO. 051073)
221 Sansome Street, Third Floor
San Francisco, CA 04104
Telephone: (415) 362-0449
Facsimile: (415) 394-5544

Counsel to the Official Unsecured Creditors Committee

The following constitutes
the order of the court. Signed February 3, 2012

Roger L. Efremsky
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re	Case No. 11-49803 RLE
MORTGAGE FUND '08 LLC,	Chapter 11
Debtor.	**ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING JOINT CHAPTER 11 PLAN (DATED DECEMBER 21, 2011)**
	Date: January 30, 2012 Time: 10:30 a.m. Place: Courtroom 201 1300 Clay Street Oakland, CA 94612
	Judge: Hon. Roger L. Efremsky

The *Joint Combined Chapter 11 Plan and Disclosure Statement (Dated December 21, 2011)* [ECF No. 101] (the "Plan" and "Disclosure Statement") filed by the debtor and debtor-in-possession Mortgage Fund '08 LLC (the "Debtor") and the Official

Committee of Unsecured Creditors (the "Committee") having been transmitted to creditors and equity security holders, and it having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) have been satisfied, for the reasons stated generally on the record and as more fully set forth in the accompanying *Findings of Fact and Conclusions of Law in Support of Joint Combined Chapter 11 Plan and Disclosure Statement (Dated December 21, 2011)* and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The Disclosure Statement is approved as containing adequate information under 11 U.S.C. § 1125;

2. The Plan is amended in the following respects:

(a) Part 6, *Classification and Treatment of Claims*, Class 1, paragraph 3 is deleted and replaced with the following:

> 3. Impairment. This class is unimpaired and is not entitled to vote.

(b) Part 10, *Means of Execution*, section (d) Liquidation of Assets; Distributions, the first sentence is deleted and replaced with the following:

> The Trustee of the Liquidating Trust shall liquidate or dispose of all assets of the estate. From proceeds received by the Liquidating Trust, as provided in this Plan, the Trustee of the Liquidating Trust shall: (1) first, pay Class 1 claims, as applicable in respect to the property that serves as security therefore; (2) second, pay administrative claims (unless holders of such claims consent to other treatment); (3) third, pay priority unsecured claims, if any; (4) fourth, pay allowed Class 3 convenience claims; and (5) fifth, distribute pro rata to holders of allowed Class 2 general unsecured claims.

4. The Plan, as so amended, is confirmed.

5. The Liquidating Trust Agreement is amended in the following respects:

(a) Section 3.2 (x) is amended by adding the following at the end of the sentence:

> "; provided that, the Trustee shall give notice and opportunity for hearing to the Office of the United States Trustee, the Post-Confirmation Creditors' Committee, and all parties requesting

special notice in connection with sales of Trust Assets, unless otherwise ordered by the Bankruptcy Court.

6. The Liquidating Trust Agreement, as so amended, is approved.

END OF ORDER

COURT SERVICE LIST

All parties requiring service are ECF Registered Participants who have consented to electronic service through the Court's ECF Procedures

Notice Recipients

District/Off: 0971-4 | User: lblue | Date Created: 2/3/2012
Case: 11-49803 | Form ID: pdfeo | Total: 7

Recipients of Notice of Electronic Filing:

ust	Office of the U.S. Trustee/Oak	USTPRegion17.OA.ECF@usdoj.gov
aty	Cecily A. Dumas	cdumas@friedumspring.com
aty	Margaret H. McGee	maggie.mcgee@usdoj.gov
aty	Robert E. Clark	rclark@friedumspring.com
aty	Stefanie A. Elkins	selkins@friedumspring.com

TOTAL: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Mortgage Fund '08 LLC	2500 Camino Diablo, Suite 110	Walnut Creek, CA 94597
3pd	Mortgage Fund '08 LLC	2500 Camino Diablo, Suite 110	Walnut Creek, CA 94597

TOTAL: 2

STATE OF SOUTH CAROLINA)
) **ENGAGEMENT AGREEMENT**
COUNTY OF HORRY)

There are a number of elements which make up a lawsuit, not the least of which is the Engagement Agreement between the attorney and client. This Agreement should clarify any questions you may have regarding the nature of our engagement. As always, should you have any questions regarding this or any matter, please contact our office so we can address your concerns as soon as possible.

This Agreement, entered into the 22 day of October, 2012, outlines the terms under which you have agreed to hire me as your attorney. By hiring me, you (the word "you" or client(s)" are used interchangeably in this Agreement and refer to Jericho All-Weather Opportunity Fund LP, Jericho State Capital Corporation of Florida, and Susan L. Uecker, Trustee of the Mortgage Fund '08 Liquidating Trust (the "Trust") hire all attorneys at BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A., and we are each bound by law to represent your interest in this matter.

WITNESSETH:

1. **LEGAL SERVICES TO BE PROVIDED:** We agree to represent you at the trial court level with regard to your claim for damages arising out of the condemnation of property located on Peachtree Road, Myrtle Beach, South Carolina, designated at Tract 11 by the South Carolina Department of Transportation.[1]

2. **RESPONSIBILITIES OF ATTORNEY AND CLIENT:** We will perform the legal services outlined in this Agreement, we will keep you informed of any developments in your matter, and we will respond to your inquiries and communications. You agree to be truthful and cooperative with us and keep us reasonably informed of developments on your end and of your current contact information.

3. **ATTORNEY'S FEES:** The amount Attorney will receive for attorney's fees for the legal services to be provided under this Agreement will be Thirty-three and One-third percent (33-1/3%) of any amount recovered by way of settlement or trial verdict and Thirty-three and One-third percent (33-1/3%) of any interest that amount has earned. Attorney shall also be entitled to Thirty-three and One-third percent (33-1/3%) of all amounts recovered in the event of an award of litigation expenses from the court.

4. **NO TOTAL FEE GUARANTEE:** Your signature below is your acknowledgment that we have not made you any promises regarding the total amount of attorney's fees you will pay in this matter.

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[1]This Agreement does not involve the separate Title Policy lawsuit which is currently pending in Horry County in which the attorney of record is Fred Newby, Esquire.

5. **COSTS:** We are not responsible for the "costs" of litigation. As such, you will be billed for and agree to promptly pay all costs including, but not limited to: court costs and costs for subpoenas, photographs, photocopies, depositions and court reporters, expert reports, witness fees, and other expenses incident the subject matter of our representation. Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida agree to seek approval from the Trust for each occurrence of costs exceeding $1,000.00, which costs: (a) shall be charged to the Trust only upon its approval, which may be withheld for any reason; and (b) in any case, which costs shall be chargeable against the portion of the proceeds resulting from damages to the remaining property, and proceeds resulting from the land actually acquired. Payment of such costs without the Trust's approval shall not be construed as an advance or loan on behalf of the Trust.

6. **ATTORNEY'S LIEN:** In order to guarantee payment of costs and fees arising from the matters for which I represent you, I am retaining a lien on any of your claims or causes of actions which are the subject of the those matters, and I am also retaining a lien on any recovery, whether we settle this matter or it goes to trial.

7. **DISCLAIMER OF GUARANTY:** Of course, I must note we make no promises or guarantees concerning the final outcome of this matter and we only represent to you that we will put forth our best efforts in the representation of your legal interests.

8. **NO INDEPENDENT SETTLEMENT:** We are not permitted to settle your claim or cause of action without your approval. Likewise, by signing this Agreement, you agree not to settle your claim or cause of action without our involvement. If you negotiate a settlement of your claim without involving us, you agree to pay us the costs and fees you owe us according to this Agreement.

9. **DISTRIBUTION OF PROCEEDS:** Once this matter has been resolved, whether by settlement or trial verdict, the proceeds will be disbursed as follows:

   a. The Attorney's Fees will be immediately disbursed pursuant to Paragraph Three (3) of this Agreement.

   b. Any outstanding Costs will be paid pursuant to Paragraph Five (5) of this Agreement.

   c. The Trust will be paid all the proceeds from the real property actually acquired by SCDOT, less any expenses incurred by Jericho All-Weather Opportunity Fund LP or Jericho State Capital Corporation of Florida.[2]

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[2] In the event this case is settled, Attorney will attempt to reach an agreement with SCDOT as to which portion of the proceeds resulted from the land actually acquired and which portion of the proceeds resulted from damages to the remaining property. In the event this case is resolved by jury verdict, Attorney will request the Court administer a Special Interrogatory to

d. Sixty percent (60%) of that portion of the proceeds attributable to damages to the remainder property will be paid to Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida. Forty percent (40%) of that portion of the proceeds attributable to damages to the remainder property will be paid to the Trust.

10. **FORBEARANCE:** Clients each agree to take no action to sell, convey, or foreclose upon any interest in the real property which is the subject of the present Condemnation action until the Condemnation action has been concluded with finality unless it is done with the express written consent of the other clients; provided, however, that the Trust is entitled to sell its interest if it first offers to sell its interest to Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida as provided in Paragraph 11 hereof.

11. **FIRST RIGHT OF REFUSAL:** Should the Trust receive any bona fide third party offer to purchase any of the Trust's interest in the real property which is the subject of the present Condemnation action, Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida shall have the first right of refusal to purchase that interest. The Trust shall be entitled to market and list for sale its interest in the real property in its sole discretion; provided, however, that the Trust shall not consummate a sale unless it first offers to sell its interest to Jericho All-Weather Opportunity Fund LP and Jericho State Capital Corporation of Florida, as provided above.

12. **BINDING EFFECT:** This Agreement is binding upon and between the signatories hereto as well as their heirs and assigns forever.

13. **MERGER CLAUSE:** By our signatures, you and I acknowledge our understanding that this Agreement is our full and complete Agreement regarding this legal matter, and this document extinguishes any earlier Agreements we may have had. We are both bound to this Agreement, and we understand this Agreement will survive us and be binding upon our several successors, heirs, executors or administrators, as the case may be.

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the jury asking the jury to set forth the amount of the verdict that resulted from the land actually acquired and that portion of the proceeds that resulted from damages to the remaining property. In the event this case is resolved by verdict without a jury, Attorney will request the Court set forth the amount of the verdict that resulted from the land actually acquired and that portion of the proceeds that resulted from damages to the remaining property. In the event either: no agreement is reached with SCDOT as to the apportionment of proceeds between the land actually acquired by SCDOT and the damages to the remainder; or, the Court refuses to either issue a Special Interrogatory as to this issue; or, in the event the case is tried without a jury, the Court refuses to establish this apportionment: the question of apportionment between the portion of the proceeds attributable to the land actually acquired by SCDOT and the portion attributable to damages to the remainder will be referred to the Horry County Master in Equity and all parties hereto agree to abide by the Master's decision without appeal.

14. **MODIFICATION BY SUBSEQUENT AGREEMENT:** This Agreement may be modified or amended only pursuant to a written agreement designated as a modification or amendment and signed by all parties hereto.

15. **SEVERABILITY CLAUSE:** If any provision of this Agreement is determined to be unenforceable in whole or in part for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. **EFFECTIVE DATE OF AGREEMENT:** This Agreement will take effect upon the signature of the last of the parties named herein.

17. **CLIENT ACKNOWLEDGES RECEIPT:** By your signature you acknowledge you have read this Agreement and received a copy for your records.

WITNESS:

CLIENT(S):

Jericho All-Weather Opportunity Fund LP
By: Surgky Asset Management Inc
By: _____
Its: President

WITNESS:

CLIENT(S):

Jericho State Capital Corporation of Florida
By: _____
Its: PRESIDENT

WITNESS:

CLIENT(S):

Mortgage Fund '08 Liquidating Trust
By: Susan L. Uecker
Its: Trustee

ATTORNEY:

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.

Howell V. Bellamy, Jr.

Pltf

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
South Carolina Department of Transportation)
Plaintiff(s))
vs.)
Jerrdo State Capital Corporation of Florida)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-2009 CP 26 11956 -

(Please Print)
Submitted By: Hart Baker
Address: SC DOT
P.O. Box 191
Columbia, SC 29202-0191

SC Bar #: 15239
Telephone #: 803-737-1538
Fax #: 803-737-2691
Other:
E-mail: bakerha@scdot.org

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed accurately, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

2009 DEC 15 AM 10:27 HORRY COUNTY CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☑ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20___-CP-___-___	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
_____	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
	☐ Other (299)	☐ Other (399)	☐ Other (499)
	_____	_____	_____

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
_____	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture—Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799) _____	_____	☐ Zoning Board (970)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
			_____

Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Motion to Quash Subpoena in Out-of-County Action (660)
_____	☐ Sexual Predator (510)

Submitting Party Signature: Hart Baker Date: 12-14-09

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCDOT R/W Form 841 (06-01)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.
COUNTY OF HORRY	)	

HORRY COUNTY
2009 DEC 15 AM 10:27
CLERK OF COURT

Road/Route SC Route 31 (Carolina Bays Parkway)
File 26.036775A
Item
Project HORR
PIN 36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

NOTICE OF FILING

TO THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-230(b), et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified that as you have rejected the amount tendered as just compensation as stated in the Condemnation Notice, the Condemnor has filed the Condemnation Notice with the Clerk of Court for Horry County pursuant to Section 28-2-90, Code of Laws of South Carolina, 1976,

as amended, may now proceed to take possession of the property or interest described in the Condemnation Notice.

Hart Baker, Assistant Chief Counsel
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 2009

SCDOT R/W Form 813 (06-01)

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) C/A NO.
COUNTY OF HORRY	)

2009 CP 11956

HORRY COUNTY
2009 DEC 15 AM 10:27
CLERK OF COURT

Road/Route SC Route 31 (Carolina Bays Parkway)
File 26.036775A
Item
Project HORR
PIN 36775 RD01

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

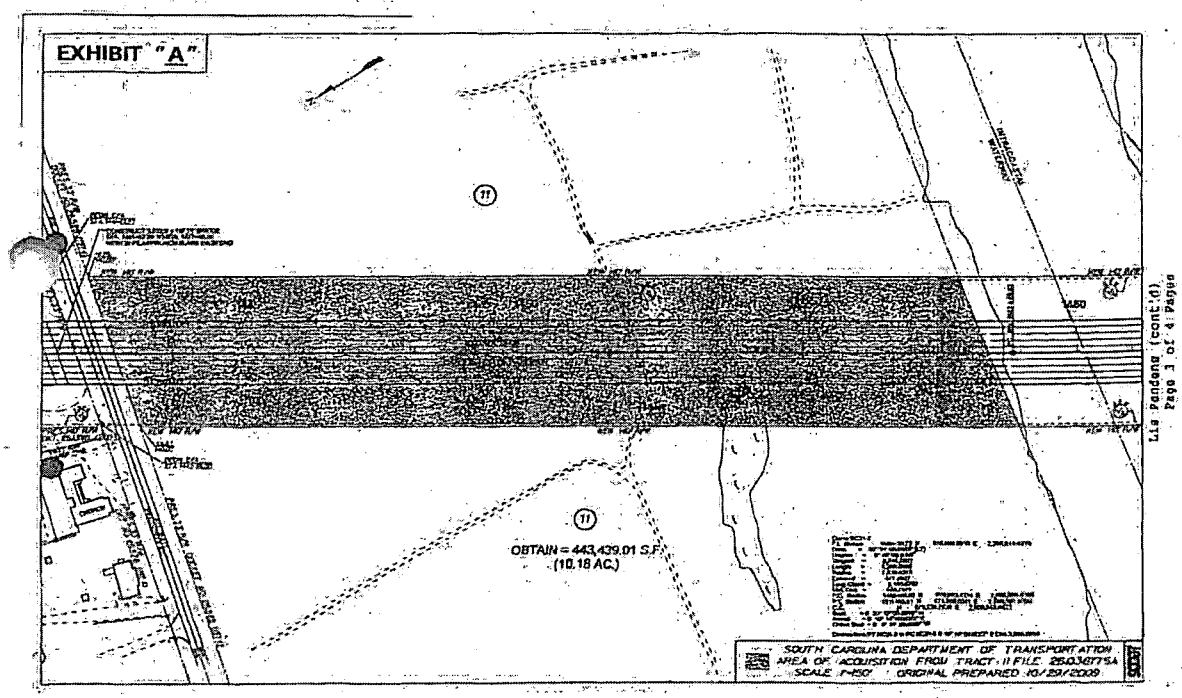
LIS PENDENS

LP 09-5062

NOTICE IS HEREBY GIVEN that the Condemnor above named pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., of the South Carolina Code of Laws, 1976, as amended, has brought an action against the Condemnee(s) above named to acquire the real property described herein for public purposes, to-wit:

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

Tax Map Number 178-00-05-032


EXHIBIT "A"
11
OBTAIN = 443,439.01 S.F.
(10.18 AC.)
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM TRACT 11 FILE 25.0.3.077 SA
SCALE 1"=50' ORIGINAL PREPARED 10/29/2009
Lia Pendang (cont:1)
Page 3 of 4 Pages

The property sought herein is to be acquired for public purposes, more particularly a section of SC Route 31 (Carolina Bays Parkway).

Hart Baker
Assistant Chief Counsel

BY: _____
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 2009

SCDOT R/W Form 814 (08-01)

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) C/A NO.
COUNTY OF HORRY	)

Road/Route **SC Route 31 (Carolina Bays Parkway)**
File **26.036775A**
Item
Project **HORR**
PIN **36775 RD01**

South Carolina Department of Transportation,

Condemnor,

VS.

Jericho State Capital Corporation of Florida,

Landowner(s).

HORRY COUNTY
2009 DEC 15 AM 10:27
CLERK OF COURT

SUMMONS

TO: THE LANDOWNER(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED, advised and notified, that pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, et seq., the within Condemnation Notice and Tender of Payment, a copy of which is herewith served upon you, has been filed with the Clerk of Court for Horry County. The purpose of this lawsuit is to enable the Condemnor, the South Carolina Department of Transportation, to acquire certain real property for its public purposes, as is more fully stated in the attached Condemnation Notice and Tender of Payment.

Responsive pleadings to the Condemnation Notice and Tender of Payment are not necessary.

Hart Baker
Assistant Chief Counsel

BY: _____
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 2009

SCDOT R/W Form 815 (08-08)

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) C/A NO.
COUNTY OF HORRY	) 2009CP26 11956

Road/Route	**SC Route 31 (Carolina Bays Parkway)**
File	**26.036775A**
Item	
Project	**HORR**
PIN	**36775 RD01**

South Carolina Department of Transportation, Condemnor, VS. **Jericho State Capital Corporation of Florida,** Landowner(s).	**CONDEMNATION NOTICE AND TENDER OF PAYMENT** (JURY TRIAL DEMANDED)

HORRY COUNTY
2009 DEC 15 AM 10:27
CLERK OF COURT

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

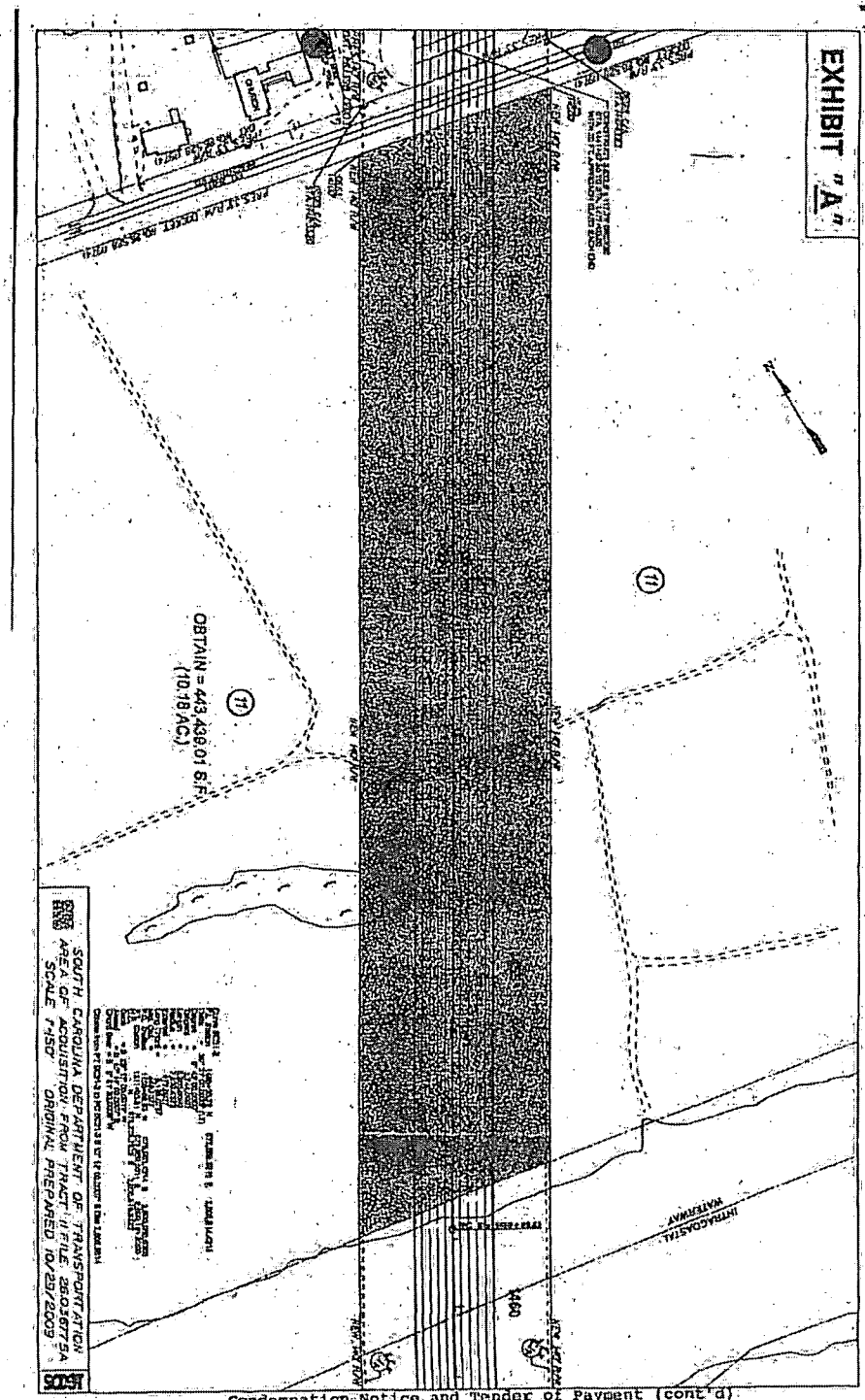
1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Jericho State Capital Corporation of Florida** is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by that certain deed from **J. Stanton Cross – Master dated February 25, 2008 and recorded February 26, 2008 in Deed Book 3317, Page 969 in the office of the RMC for Horry County.**

3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).

Tax Map Number 178-00-05-032



Condemnation Notice and Tender of Payment (cont'd)
Page 3 of 6 Pages

4. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

5. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of SC Route 31 (Carolina Bays Parkway).

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

8. Project plans may be inspected at the office of the South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526

9. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF BENEFITS EXCEED DAMAGES AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

10. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

11. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

12. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

13. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

14. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

15. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

Hart Baker
Assistant Chief Counsel

BY: _____
Attorney for Condemnor (SCDOT)
P. O. Box 191
Columbia, South Carolina 29202
Telephone: (803)737-1347

Columbia, South Carolina

December 1, 20 09

SCDOT R/W Form 839 (06-01)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.
COUNTY OF HORRY	)	

Road/Route **SC Route 31 (Carolina Bays Parkway)**
File **26.036775A**
Item
Project **HORR**
PIN **36775 RD01**

HORRY COUNTY
2009 DEC 15 AM 10:27
CLERK OF COURT

South Carolina Department of Transportation,	)	
Condemnor,	)	AFFIDAVIT
VS.	)	
Jericho State Capital Corporation of Florida,	)	
Landowner(s).	)	

PERSONALLY APPEARED before me **Daryl Hardwick** who, being first duly sworn, says and deposes:

1. That the amount tendered by the Condemnor to the Landowner(s) in the Condemnation Notice has been rejected;

2. That the Condemnor demands a trial not earlier than sixty (60) days after the date of service of this affidavit upon the Landowner(s);

3. That the Condemnor demands a trial by jury;

4. That, at this time, the Condemnor does not demand that this action be given priority over other cases;

5. That the Clerk of Court should notify the following Landowner(s) of the call of the case.

SCDOT R/W Form 839 (06-01)

Affidavit (continued)

Jericho State Capital Corporation of Florida
3835 NW Boca Raton Boulevard
Suite 200
Boca Raton, Florida 33431

Daryl Hahn

SWORN to before me this 23rd

day of November ,2009

Brandi M. Anderson

NOTARY PUBLIC FOR South Carolina

My Commission Expires: 10-14-2018

SCDOT R/W Form 823 (01-00)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Road/Route	SC Route 31 (Carolina Bays Parkway)	)	
File	26.036775A	)	AGREEMENT AND REQUEST
Item		)	
Project	HORR	)	FOR PAYMENT
PIN	36775 RD01	)	

I (we), the landowner(s), request payment of the amount determined by the South Carolina Department of Transportation as just compensation for the property and rights to be acquired for the project mentioned above. By making this request I (we) agree to execute the instruments necessary to convey to the South Carolina Department of Transportation the property interests and rights described in the Condemnation Notice and Tender of Payment. Upon signing and payment of the agreed upon amount, the landowner waives any and all rights pursuant to the Code of Laws of South Carolina, 1976, as amended by the Eminent Domain Procedure Act.

_____ (L.S.,) _____ (L.S.)

_____ (L.S.) _____ (L.S.)

_____ (L.S.) _____ (L.S.)

Dated the _____ day of

_____, 20 _____

Tract 11

NOTE: THERE IS NO CASH CONSIDERATION OFFERED FOR THIS RIGHT OF WAY.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO.: 2009-CP-26-11956
COUNTY OF HORRY)	

Road/Route SC Route 31 (Carolina Bays Parkway)
File 26.036775A
Item Project HORR
PIN 36775 RD01

FILED
11 APR 20 PM 3:20
CLERK OF COURT
HORRY COUNTY, SC

South Carolina Department of Transportation,
Condemnor,
vs.
Jericho State Capital Corporation of Florida,
Landowner,
and
R.E. Loans, LLC and Mortgage fund '08, LLC,
Additional Condemnees.

AMENDED CONDEMNATION NOTICE AND TENDER OF PAYMENT
(Jury Trial Demanded)

TO: THE LANDOWNER(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Jericho State Capital Corporation of Florida** is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by that certain

deed from J. Stanton Cross - Master dated February 25, 2008 and recorded February 26, 2008 in Deed Book 3317, Page 969 in the office of the RMC for Horry County.

3. R.E. Loans, LLC and Mortgage Fund '08, LLC are named as additional Condemnees as they may have claims or interest in and to the real property described herein based upon the records recorded in the office of the RMC for Horry County.

4. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

> **All that parcel or strip of land, in fee simple, containing 10.18 acres, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by Jericho State Capital Corporation of Florida, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 1442+00 and 1459+00, left and right of the survey centerline of SC Route 31 (Carolina Bays Parkway).**

5. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

6. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of SC Route 31 (Carolina Bays Parkway).

7. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

8. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required

by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

9. Project plans may be inspected at the office of the **South Carolina Department of Transportation, Horry County Maintenance Office, 4145 Highway 701 North, Conway, South Carolina 29526.**

10. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF **BENEFITS EXCEED DAMAGES** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

11. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

12. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the

tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

13. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

14. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

15. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

16. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

THOMPSON & HENRY, PA

John B. McCutcheon, Jr.
E. B. Davis Inabnit, Jr.
Attorney for Condemnor (SCDOT)
Post Office Box 1740
Conway, SC 29528-1740
Telephone No: (843) 248-5741
Fax No: (843) 248-5112

Conway, South Carolina

April 19, 2011.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO. 2009-CP-26-11956

Road/Route	SC Route 31 (Carolina Bays Parkway)
File	26.036775A
Project	HORR
PIN	36775 RD01
Tract	11

South Carolina Department of Transportation,

CONDEMNOR,

vs.

Jericho State Capital Corporation of Florida,

LANDOWNER,

AND

R.E. Loans, LLC and Mortgage Fund '08, LLC,

OTHER CONDEMNEES.

LANDOWNER'S RESPONSES TO CONDEMNOR'S FIRST SET OF REQUESTS TO ADMIT

TO: CONDEMNOR AND ITS COUNSEL:

Landowner, by and through its undersigned counsel, hereby responds to Condemnor's Requests to Admit as follows:

REQUESTS TO ADMIT

1. That the date of taking for valuation purposes is December 15, 2009.

Response: Admit.

2. That the Landowner's property contained 131.40 acres prior to the condemnation.

Response: Admit.

3. That the Condemnor is acquiring 10.18 acres in the condemnation action.

Response: Until Landowner is provided a complete survey of the acquisition property, Landowner must deny this Request.

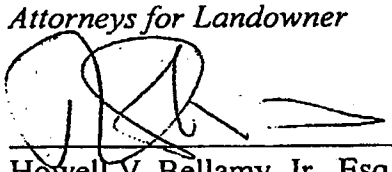
4. That the Landowner retains 121.22 acres after the condemnation.

Response: Until Landowner is provided a complete survey of the property it will retain following Condemnor's acquisition, Landowner must deny this Request.

5. That there is no diminution in value to the 121.22 acres remaining after condemnation.

Response: Landowner denies Condemnor's assertion his remaining property value has not diminished as a result of Condemnor's acquisition, and until Landowner is provided a complete survey of the property it will retain following Condemnor's acquisition, Landowner must deny the acreage amount stated in this Request.

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, South Carolina 29578
(843) 448-2400
Attorneys for Landowner



Howell V. Bellamy, Jr., Esq., SCB # 00642
Robert S. Shelton, Esq., SCB # 68543

Myrtle Beach, South Carolina

October 30, 2012

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2009-CP-26-11956

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

Condemnor,

vs.

JERICHO STATE CAPITAL CORPORATION OF FLORIDA AND LYNX JERICHO PARTNERS, LLC,

Landowners.

Transcript of Record
(Volume I of III)

November 17, 2014

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
Attorney for Condemnor

John B. McCutcheon, Jr., Esquire
Attorney for Landowner

Dixie C. Eubank
Circuit Court Reporter

Transcription by:
Kay H. Richardson
Circuit Court Reporter

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(NOVEMBER 17, 2014)

(REPORTER'S NOTE: The following takes place in the presence of the jury panel.)

VOIR DIRE:

THE COURT: All right. Ladies and gentlemen, what we're going to do is pick the jury for the case of South Carolina Department of Transportation versus Jericho State Capital Corporation of Florida. Basically, this is a condemnation case whereby the State has condemned or taken land for public use, public purposes, and it is about compensation for that taking and use of the lands.

So, what we're going to do is I'm going to go through some questions with you and, again, as we did with the general qualification, if there is a question that you need to respond I will need for you to stand and then tell us your name and your juror number. So, the very first thing that we're going to do is let me talk to you or tell you who the potential or possible witnesses are in this particular matter. They would be Josh Wilson; Mike Barbee, B-A-R-B-E-E; Corbin Haskell; Steve Powell, Professional Engineer; James R. Jayroe, J-A-Y-R-O-E; Glen Chwatt, C-H-W-A-T-T; Scott Svirsky, that's S-V-I-R-S-K-Y. Is there any member of the jury panel that's related by blood or marriage, close personal friends, acquaintances of any of these particular witnesses? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good. Now, is there any member of the jury panel that you have any particular views -- the legal term is eminent domain but what that is, is the right of the State of South Carolina has the right to condemn and take property. Is there any member of the Jury that has any views about that particular rights of the State of South Carolina to take and condemn property that would prevent you from giving both the State of South Carolina and the Landowner a fair and impartial trial? Obviously, in that taking there has to be just compensation and that's what we're here about. But in general is there anyone that has a problem with the ability of the State of South Carolina to take and condemn any property for public use? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good.

All right. Is there -- why don't we go to if any member of the jury panel has ever been a plaintiff or a defendant or both in a trial before. Now, I am not going to ask you what occurred in that trial and I do not want you to volunteer any information to me about what occurred in that trial. Is there any member of the jury panel that you yourself were a plaintiff or a defendant or both in a lawsuit? If so, please stand. Very good.

Oh, I'm sorry. Yes, ma'am. Your name and juror number, please, ma'am?

JUROR 53: Dianne Butler, 53.

THE COURT: All right, ma'am. Were you a plaintiff, defendant or both?

JUROR 53: A defendant.

THE COURT: Very good, ma'am. Can you give to the plaintiff and to the defendant in this case, that is basically the Department of Transportation and the Landowner a fair and just trial? Can you be a fair and impartial juror in this particular case? If you have a question about it then why don't you come up and talk to me about it, then, if you've got some question about it.

(REPORTER'S NOTE: A bench conference was held off the record.)

THE COURT: All right. I am gonna set Juror 53 aside from this particular case. If you'll just go back and have a seat. Thank you.

All right. If would---counsel for the Landowner, if you would, stand and identify yourself to the Jury, please.

MR. BELLAMY: Howell Bellamy and Rob Shelton, Your Honor.

THE COURT: All right.

MR. BELLAMY: And this is Mr. Chwatt.

THE COURT: All right. Very good. Thank you.

And on behalf of the Department of Transportation?

MR. MCCUTCHEON: My name is Jack McCutcheon. I'm an attorney here in Conway and this is Bobby Martin and he

represents the SCDOT.

THE COURT: All right. Very good.

All right, ladies and gentlemen, is there any member of the jury panel that is related by blood or marriage, close personal friends, acquaintances of these lawyers that have introduced themselves to you or, regarding their practice of law, have you been clients of theirs either in the past or currently? If any of that applies to you, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good.

All right. I mentioned the names of Steve Powell, professional engineer, and Mr. James R. Jayroe. What is Mr. Jayroe's business called?

MR. SHELTON: He's an appraiser, Jayroe Appraisal Company.

THE COURT: Real estate appraiser. Is there any member of the jury panel that in some kind of business capacity has done business in any way with either Mr. Steve Powell or Mr. James R. Jayroe? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good.

All right. Let's see about any of these others. Is there any member of the jury panel that has had any type of action of any kind, either currently or in the past, that involved the South Carolina Department of Transportation in

any way? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good.

All right. All right, ladies and gentlemen, a general or catchall question, Do you know of any reason, have any question in your mind, any doubt in your mind that you believe you cannot give to the Landowner and the Department of Transportation a fair and impartial trial? That is for any reason whatsoever, do you believe you cannot give to the Landowner and the Department of Transportation and be a fair and impartial juror in this case? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Very good.

Further questions from the Landowner?

MR. BELLAMY: No, Your Honor.

THE COURT: Further questions from the Department of Transportation?

MR. MCCUTCHEON: No, Your Honor.

THE COURT: All right. Very good.

All right, gentlemen, y'all have the jury list; is that correct?

MR. MCCUTCHEON: Yes, Your Honor.

THE COURT: Is the Landowner prepared to go forward?

MR. MCCUTCHEON: Yes, sir.

THE COURT: I'm sorry. Landowner?

MR. SHELTON: Yes, Your Honor.

THE COURT: And the Department of Transportation?

MR. BELLAMY: Yes, sir.

THE COURT: All right. Very good. We are going to use the numbers on the left, of course, gentlemen. Go ahead, Madame Clerk.

And, ladies and gentlemen, these aren't your numbers; these are just random numbers assigned to particular jurors. Obviously, will be using 1 through 20 and then 21 through 23 for the alternate. All right? Very good.

All right. Go ahead, Madame Clerk.

JURY SELECTION:

CLERK: Yes, sir. Begin with the numbers on the left. Begin with the Plaintiff, please.

MR. MCCUTCHEON: The Department strikes Juror Number 2.

CLERK: Department, Number 2.

MR. BELLAMY: Landowner, Number 7.

CLERK: Landowner, Number 7.

MR. MCCUTCHEON: Department strikes Number 8.

CLERK: Department, Number 8.

MR. BELLAMY: Landowner, Number 10.

CLERK: Landowner, Number 10.

MR. MCCUTCHEON: Department, Number 9.

CLERK: Department, Number 9.

MR. BELLAMY: Landowner, Number 20.

CLERK: Landowner, Number 20.

MR. MCCUTCHEON: Department strikes Number 13.

CLERK: Department, Number 13.

MR. BELLAMY: Number 22.

THE COURT: I'm sorry. 1 through 20, we haven't got to the alternate yet.

MR. BELLAMY: Excuse me, Your Honor. Number 6.

CLERK: Landowner, Number 6.

Alternate, please.

MR. MCCUTCHEON: The Department strikes Juror Number 22.

CLERK: Department, Number 22.

MR. BELLAMY: Number 24.

MR. MCCUTCHEON: 21 through 23, Skeets.

MR. BELLAMY: 23 -- Number 23.

CLERK: Landowner, Number 23.

May we review your strikes, please? Department strikes Numbers 2, 8, 9, 13, 22.

MR. MCCUTCHEON: That's correct.

CLERK: Landowner strikes Numbers 6, 7, 10, 20 and 23.

MR. BELLAMY: Correct.

THE COURT: All right. Very good.

All right. Madame Clerk, if you would, if you would call the names of the Jury forward and if and when your name is called if you would come forward and have a seat in the jury box, please. Thank you.

CLERK: Number 179, Judy Huston; Number 246, Patrick Neal; Number 288, Deborah Rea; Number 140, Barbara Green; Number 20, Jane Barber; Number 193, Broadus Jones; Number 234, Danielle McLean; Number 263, Stacy Oxendine; Number 266, Mandy Pappas; Number 87, Timothy Cutnaw; Number 118, Heidi Fincham; Number 68, Reta Cartrette; Number 112, Joanne Ercole.

THE COURT: All right, ma'am. Please note that you are the alternate in this case. Thank you.

Any objection to the Jury as impaneled in this matter from the Landowner?

MR. BELLAMY: No, Your Honor.

THE COURT: From the Department of Transportation?

MR. MCCUTCHEON: No, sir.

THE COURT: Very good. I find the Jury has been properly impaneled pursuant to Batson versus Kentucky and J.E.B. versus Alabama.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, of this particular Jury, I'm going to ask that you go to do one thing just a few minutes and that is going to be to pick your foreperson for this particular Jury. So, let me tell you very briefly what the foreperson's duties and responsibilities are. If we are here in the courtroom and the Jury needs attention to some matter, the witness needs speak up, the lawyers or whatever the issue is the foreperson would raise your hand,

get the Court's attention and we'll handle the matter, whatever it is. If you're back in the jury room and some matter comes up, you will take the pad and pen provided to you and write out a note and sign it and give it to the Bailiff for the Deputy and then it will come to me and we'll handle the matter whatever it might be. When we have concluded the evidentiary portion of the trial, we've heard all the witnesses in this case, and then we've heard the closing arguments of the attorneys, the request of the particular sides as to what they want you to do as a result of your unanimous verdict in this particular matter and then I have given to you the law that you will apply to the facts and evidence you find to be true in this particular case, I will give the case or submit the case to you for your deliberations and your unanimous decision in this particular matter. Now, again, in that regard, the foreperson's duties and responsibilities change in this way. The foreperson is gonna act like the chairperson at a meeting. An important duty that the foreperson has is to ensure, make sure, that everybody has an opportunity to speak, everyone that wants to, their voice has an opportunity to be heard on the issues to be discussed and in the unanimous decision. The foreperson's voice and vote carries no more weight than any other member of the jury panel. Everybody is equal or on the same plane in that regard but somebody needs to be in charge and maybe guide the

discussions if necessary. The final duty -- and obviously if some question comes up, again, write out a note, sign it, give it to the Bailiff who will come to me and we'll handle whatever that might be. The final duty and responsibility of the foreperson is once the Jury has well and truly deliberated and you have reached your unanimous verdict in this particular matter, there will be a verdict form that the Court will provide to you, a written form, and the foreperson will then take the verdict form, either check the appropriate block or write out the appropriate words or whatever and thereafter sign their name, putting the correct date and indicate that indeed is the unanimous verdict of each and every member of the Jury.

So, with that brief explanation of the foreperson's duties and responsibilities, I'm going to ask that you go back to your jury room, select your foreperson, knock on the door and let the Bailiff know who that foreperson is and -- Is Ercole your last name, ma'am?

JUROR 112: Yes.

THE COURT: All right. You, being the alternate, you can't be the foreperson but obviously you can vote on who the foreperson is. Everybody else is eligible to be the foreperson. All right? If y'all will go back to the jury room, please. Thank you.

(REPORTER'S NOTE: Jury exits courtroom. The following takes

place outside the presence of the Jury.)

THE COURT: All right. Ladies and gentlemen of the jury panel that were not selected for this particular case, I'm going to excuse you for the balance of today. I would ask that you call that juror information line tonight after 6 o'clock and follow those instructions, whatever they may be. But with that, you are now excused. Thank you very much.

(REPORTER'S NOTE: Remaining jury panel exits courtroom.)

THE COURT: All right. On behalf of the Department of Transportation, any issue that we need to take up at this point in time? Mr. McCutcheon?

MR. MCCUTCHEON: Your Honor, I think both of us have a motion in limine in this particular case.

THE COURT: All right. Okay.

MOTIONS:

MR. MCCUTCHEON: The Landowner's motion in limine, I have no problem with, Your Honor. Apparently, there's no --- they are concerned about the facts that my appraiser is going to talk about a PDD in this particular case and I have assured both Mr. Bellamy and Mr. Shelton that he is not going to talk about PDT -- PDD, we're going to address the property on the basis of R-1 residential.

THE COURT: All right. Very good. Does that take care of the motion that you have Mr. Shelton?

MR. SHELTON: That portion of it, yes, Your Honor.

THE COURT: All right.

MR. SHELTON: There's also on this particular property there's a pond that didn't exist on the date of the take and the pond was the result of having sold fill material to the Highway Department or one of their contractors. So, we also don't want any reference to that pond or the sale of the fill material or the proceeds therefrom. That postdates the take and it's not relevant.

MR. MCCUTCHEON: As far as the pond is concerned, the original appraisal by Mr. Haskell eliminated the pond and then by error it went back in with the noise analysis expert and Mr. Haskell. It has been corrected and Mr. Haskell is not gonna talk about the pond nor is Mr. Wilson going to talk about the pond and we did not intend to introduce any evidence about the sale of the fill material from the property.

THE COURT: All right. Very good. Thank you. All right.

Yes, sir, Mr. Bellamy?

MR. BELLAMY: I understand what Jack has said but I want to be real clear. Mr. Haskell had in his updated appraisal referred to the previous owner site plan. That was eliminated by agreement without any question and I just want to be sure, because he keeps putting it back in his updated appraisal.

THE COURT: All right. But it's -- okay, so there's a previous site plan?

MR. BELLAMY: That we've agreed is not relevant to the taking.

MR. MCCUTCHEON: I agree with that, Your Honor.

THE COURT: All right. Very good.

MR. MCCUTCHEON: My guy is not gonna testify to it.

THE COURT: All right. Very good. Good, good, we're in agreement then. Great.

Mr. Shelton, anything else in your motion?

MR. SHELTON: No, that's our motion, thank you.

MR. MCCUTCHEON: We have a motion, Your Honor.

THE COURT: Yes, sir, Mr. McCutcheon.

MR. MCCUTCHEON: This case has been going on since 2009.

THE COURT: Yes, sir.

MR. MCCUTCHEON: And at that particular point in time, it's my understanding -- I wasn't involved in it at that time but there were some other lawsuits and so forth going on about whether or not there was a PDD that existed on this property and whether that there was not. And there was an appraisal done at that time by Mr. Clyde Ratchford. And we are not using Mr. Ratchford as an appraiser in this particular case.

THE COURT: All right.

MR. MCCUTCHEON: That was done way back when these other things were in the ---

THE COURT: All right, sir.

MR. MCCUTCHEON: Whether they -- and we are moving to

exclude any reference to Mr. Ratchford's appraisal.

THE COURT: All right. Mr. Shelton, any objection to that?

MR. SHELTON: Yes, Your Honor.

THE COURT: All right. And what would that be?

MR. SHELTON: Well, this case was filed December 15th, 2009. An amended condemnation notice was filed April 20th, 2011 and that's the one that's in Your Honor's file which shows that benefits exceed damages and that's based on this earlier appraisal. Now, the statute requires that the DOT negotiate in good faith with the Landowner and tender to them an appraisal in good faith. We think we should be entitled to explain to the Jury that when they came to take ten acres of this Intracoastal waterfront property, through the middle of the tract, they offered the property owners zero, zero dollars. That is directly relevant. That's the only thing that's on the file at the Clerk of Court's office as we sit here today, Your Honor. That has not been updated. The fact that the DOT appraisal is now at $998,000 is telling in itself. When we started out at zero dollars, they cannot in good conscience say that that was fair dealing with this property owner and the Jury deserves to hear that.

THE COURT: Well -- all right. Mr. McCutcheon, your argument to that, please, sir.

MR. MCCUTCHEON: Your Honor, the thing about it -- a

little bit more history about this case.

THE COURT: Yes, sir.

MR. MCCUTCHEON: The condemnation notice was filed in 2009.

THE COURT: Yes, sir.

MR. MCCUTCHEON: There were lawsuits going on. Through inadvertence, the condemnation action got dismissed and was dismissed for a period of time.

THE COURT: Okay.

MR. MCCUTCHEON: And we had to move to put it back.

THE COURT: All right, sir.

MR. MCCUTCHEON: And we sent to the land -- and it think we sent an amended notice to them in this case and that's the one that was ended up -- or maybe it wasn't, but we all agreed to the amended notice in the one that was originally there, Your Honor, and all of the witnesses in this case are going to testify based upon the appraisals and so forth from these. That isn't anything, Your Honor, that -- the prejudice of that far outweighs because now the -- now the Department's appraiser is going to testify that just damages are $998,000.

THE COURT: All right. Hold on a second. Let me read -- it looks like Judge Hyman's order restoring the case. Let me look at it, please.

MR. MCCUTCHEON: Your Honor, I also think that -- I think that Mr. Shelton and Mr. Bellamy filed a document to correct

the parties' representation in this case and to establish the correct name of Jericho.

MR. SHELTON: We did. Your Honor ---

THE COURT: Hold on. Y'all give me just one more second and let me finish reading the order. Okay?

All right. Mr. Shelton, Judge Hyman, in his order of January 8, 2013 says, it is further ordered that the Condemnor is allowed to amend their original condemnation notice and tender of payment in conformance with the amended summons and the amended condemnation notice and tender of payment attached hereto and service of same may be made upon counsel for the landowner and other condemnees.

MR. SHELTON: And, Your Honor, they did that.

THE COURT: Okay. And I appreciate that but that indicates that by action of the Court they were allowed to amend and proceed upon from that day forward the notice and tender of payment and amend their original condemnation notice.

MR. SHELTON: And they did but they did not tender any money. They offered zero in that amended condemnation notice.

THE COURT: Well, then from that period forward, from Judge Hyman's order forward, you'll be able to reference -- and Mr. McCutcheon, you'll be able to reference what the amendment says. We're not going beyond or behind the original. Okay. We're going forward from what took place as

a result of Judge Hyman's order of January 8, 2013. That's, in essence, the start of this particular case because the Court allowed the amendment and said this is what is proper at this point in time. So, that's where we're gonna -- we'll start with that. Whatever that amended notice and tender of payment says that Judge Hyman allowed, that's what we're going with. All right. So, whatever it is, I don't -- I don't know what that was. You know, I'm sure it's in the file; I just haven't found it yet. But whatever it is that was filed after Judge Hyman's order or in conjunction with Judge Hyman's order, that's where we going. All right? So, that's what -- that's what Judge Hyman said. All right?

MR. SHELTON: Your Honor, just for clarification for the record, we all agree the date of take predates that order.

THE COURT: Well, I appreciate that but as far as what your question was ---

MR. SHELTON: No, I'm just talking about for the Jury when we tell them ---

THE COURT: Yes. The date of taking is December 15th, 2009; is that correct?

MR. SHELTON: Yes, sir.

MR. MCCUTCHEON: Your Honor, the other thing by way of clarification, when it was discovered that this case had been inadvertently dismissed, I first contacted Mr. Bellamy and Mr. Shelton to find out if they would represent that Landowner,

they said no. Subsequent, yes it was, and then subsequent to that time, Skeets, you called me back and said you had been represented by this particular Landowner and from that point forward, Your Honor, we have gone with Mr. Corbin Haskell's appraisal, the amended notice and all of that stuff. And everything that happened -- the thing that predicated the PDD deal was we had to get Mr. Haskell to do yet another appraisal to take that out.

THE COURT: All right. Well, I appreciate that. I want -- all right. That's fine. All right.

Anything else, Mr. McCutcheon?

MR. MCCUTCHEON: No, sir.

THE COURT: Anything else, Mr. Shelton?

MR. SHELTON: No, Your Honor.

MR. BELLAMY: No, Your Honor.

THE COURT: All right. Very good.

BY THE COURT:

THE COURT: All right. For your information, counsel, the Jury has selected Juror Number 87, Mr. Timothy R. Cutnaw as the foreperson. That is the foreperson for this particular Jury.

All right. Gentlemen, if we would -- okay. So, in this -- I gave y'all a information form and y'all filled it out and on it you've indicated that the date of taking is December 15, 2009; the before area was 131.4, that's acres, I'm assuming;

the area of taking is 10.18 acres; remainder area 121.22 acres. That there is no benefit to the remainder from the taking and highest and best use is classified as R-1 residential. Is that -- is that correct from the Landowner?

MR. BELLAMY: Yes, Your Honor.

MR. SHELTON: Yes, Your Honor.

THE COURT: And from the Department of Transportation?

MR. MCCUTCHEON: Yes, sir.

THE COURT: All right. Very good, gentlemen. We'll take a very short break for five minutes and we'll come in and -- oh, you wanted to -- you mentioned something to me about when to start.

MR. MCCUTCHEON: Well, the ---

THE COURT: It's 12 o'clock. Can we do the opening statements or do you want to ---

MR. MCCUTCHEON: We can do ---

THE COURT: --- to do those after lunch?

MR. MCCUTCHEON: We can do the opening statements. Yes, sir.

THE COURT: Any problem with doing the opening statements now, counsel?

MR. MCCUTCHEON: None. It was witness that I was concerned about.

THE COURT: All right. Very good.

MR. SHELTON: There is one other matter I just want to

bring up for the Court's consideration.

THE COURT: Yes, sir.

MR. SHELTON: We always require or request that the Judge, in the case that we have, allow the Jury to go and visit the property that's being condemned.

THE COURT: Okay.

MR. SHELTON: In this case, the property is a long rectangular tract of land that is sandwiched between Peachtree Road and the Intracoastal Waterway. And the real neighborhood for this property is the Waterway, not Peachtree Road. All of the value in this property is because of what happens on the Waterway, if they get developed on the Waterway as opposed to the homes that get developed on Peachtree Road or further interior tracts. So, the Landowner has arranged for, if Your Honor will permit it, a licensed captain to take the Jury to see the property from the Intracoastal Waterway.

MR. MCCUTCHEON: Are they gonna let them go from the road, too, Your Honor?

MR. SHELTON: Yes, Your Honor. We don't ---

THE COURT: So, if you do, you would do both?

MR. SHELTON: Yes, sir.

THE COURT: All right.

MR. SHELTON: And then they can pick them up right there at that landing under the 544 bridge, the boat is licensed and ---

THE COURT: I appreciate that you have anticipated that that might be done. Let's -- I need to hear some of this case before I make a decision on that particular matter. Just hearing about this right now, Mr. McCutcheon, do you have an objection?

MR. MCCUTCHEON: Yes, I do, Your Honor. I have an objection.

THE COURT: All right. Let's -- we'll -- let me take that under advisement and y'all bring it back to my attention at the appropriate time but I want to hear some more about this case and get a better understanding about the property and the issues before I make a decision about that.

MR. MCCUTCHEON: Thank you.

THE COURT: Thank y'all. All right. Very short break, five minutes and we'll come back and do the opening statements and then we'll break for lunch. Thank you.

*****OFF THE RECORD*****

(On the Record.)

(REPORTER'S NOTE: Jury enters courtroom.)

COURT TO JURY:

THE COURT: Y'all may be seated. All right, ladies and gentlemen. Mr. -- is it Cutnaw, sir?

JUROR 87: Yes.

THE COURT: All right. You have been selected by the Jury to be the foreperson of this Jury; is that correct?

JUROR 87: Yes, sir.

THE COURT: All right. Very good. If you would always occupy that particular seat when you come back from the jury room and then -- Ms. Ercole, if you would just occupy that particular state as the alternate.

Now, the rest of you, ladies and gentlemen, there's no other assigned seat and y'all fill in whatever it is when you happen to come back from the jury room. I just need to know where the foreperson and the alternate are. All right?

The very first thing this gonna happen in this trial is the Clerk of Court is going to administer your oath so if you would all please stand at this time.

(REPORTER'S NOTE: Jury is duly sworn.)

THE COURT: All right, ladies and gentlemen, I told you at the very beginning that this basically was a condemnation action and I told you that we call it eminent domain, that's the legal term of it. But basically, it involves the right of the State of South Carolina, or any of its legally constituted branches, there might be some other portion of government that might be able to also do it to condemn, that is to take private property, provided that it must be for a public use. It has to be for the use of the general public. Now, this case involves the condemnation of a part of some land owned by the Landowner in this matter and that Landowner, its name is Jericho State Capital Corporation of Florida. And the

Department of Transportation, South Carolina Department of Transportation, condemned and acquired from them, took from them, 10.18 acres and you'll hear testimony about where it's located in value and that types of things. But basically the State acquired or took that property, private property of the Landowner. Now, the Constitution of the State of South Carolina provides that whenever the State, through any of its portions, like here the Department of Transportation, undertakes to condemn and take private property for public use the Landowner must be properly compensated, paid, for the taking. Now, it is conceded by the Department of Transportation and the Landowner that the Landowner should be properly compensated for the taking. The question is going to be the amount. Obviously, the parties disagree as to the respective value. Now, it being conceded that something should be paid to the Landowner for the taking or acquisition of the property, the dispute is, how much. How much is the compensation for the land that was taken by the State of South Carolina, Department of Transportation, for the public use. And your purpose is going to be to listen to the testimony, all the witnesses that come before you and testify under oath to review the exhibits, any kind of documents or maybe photographs or something else that might come into evidence and, thereafter, when it's given to you at the very end, to talk about, deliberate and reach a unanimous verdict as to

that sum of money that you believe should be given to the Landowner which would amount to just compensation, which is required by our State Constitution. The State Constitution says if you take somebody's land for public use, you have got to give them just compensation and y'all are going to have to decide what is that just compensation. That's what the trial is gonna be about. You, in essence, are going to be the judges of the facts of this case I'm not going to indicate to you in any way what I think the facts in this case are and what your verdict should be. That's gonna be your job and your responsibility. It will be my job to govern the conduct of the trial and how it proceeds, maybe rule on certain things that come up from the attorneys and, obviously, give you the law that you will apply to the facts and evidence you find to be true but you're going to be judging the facts. Part of that is going to be credibility and believability. If somebody comes before you, when a person comes before you and testifies, a witness testifies before you in this case under oath, it's going to be your job to judge their credibility and believability about what they are saying. Now, you might be thinking how do I judge somebody's credibility and believability. If you think about it for a second, you do it every single day of your life. When somebody tells you something, you are automatically judging in your own mind whether or not you believe them. You use your good common

sense. You use your good judgment that you use in conducting your own affairs. That's what we're asking you to do here today, use your good common sense, use your good judgment listen to the facts and evidence and find that evidence which convinces you it's true and then you turn that into what you believe the Landowner should be paid that would come to this just compensation that is required by our State Constitution.

During the course of the trial, we'll have the opening statements of the lawyers, then we'll have the evidentiary portion, the witnesses, documents, photographs, whatever it may be. There might be, depending upon the Court's decision, my decision, a viewing of the property at the end of the testimony. I might or might not do that but we'll decide that at the end. When we've heard all the evidence, you'll hear the closing arguments of the attorneys and then I'll give you the law that you will apply to the facts and evidence that you find to be true and then I'll give the case to you for your deliberations and your unanimous decision. There are sometimes during the course of the trial that attorneys raise certain matters to the Court. And I told you, I'm not going to invade your providence about judging the facts but one of my jobs is to govern the conduct of the trial, whether or not something should be received by you. Not what you think about it but whether or not to should be used by you or seen by you in this case. The attorneys raise an objection, I might rule

on it in your presence or I might send you back to the jury room. If I do that, remember, I'm just governing the conduct of the trial, what's proper. I'm not making any comments on who to believe, credibility and believability, or what you should think about particular witness. But if I do send you back to the jury room, please understand I have to discuss that more fully with the lawyers and we'll be going into matters that are not proper your consideration in deciding this case. So, if that does happen, please understand, it's a matter of law and I have to take care of that outside the presence. All right?

So, with that, I'll turn it over to the lawyers for their opening statements to you.

Counsel?

MR. BELLAMY: May it please the Court?

THE COURT: Yes, sir.

OPENING BY BELLAMY:

MR. BELLAMY: Good morning -- good afternoon. The day kinda goes by fast. It's gonna be a lot colder tomorrow. The weatherman said twenty-three, so maybe being in here will be better. I'm Howell Bellamy. This is Rob Shelton. This is Mr. Chwatt, who we represent in this case. And as His Honor has told you, this is a condemnation case. It's a little bit different than property sales that we have a -- in that the basic premise is the State has the right for a public purpose

to condemn property. It's a constitutional mandate that was given to us by the United States Constitution and State Constitution government to be able to, what we call, take property. And in many cases it's a right that they exercise but they have to do a couple of things right and that's pay just compensation. The Landowner doesn't have the right to say no, I don't want to sell you the land or don't want to make it available to you. It's not like a sale of real estate. In this case we concede, although the Landowner doesn't particularly like it, DOT had the right because it's gonna be a road, Highway 31, so we can all drive down -- it's gonna be an extension of Highway 31.

There's one date I want to give you that I think is important or is very important, because it sets the date that you compute what just compensation will be. Now, there's no question that we've gone through the -- the Landowner has gone through a long laborious process with the DOT about just compensation. I mean, that's what you're gonna hear in this trial is what is just compensation and how has the DOT dealt with the allegation of just compensation which goes to their requirements under the statute to act in good faith with the Landowner. But you're gonna hear today, through this trial, through the testimony of the various appraisers and witnesses of December 15th, 2009. Now, I didn't pick that date, the statute says that that's the date. And how does that happen

to be the day and what does it mean? What that means is that is the date downstairs that the Department of Transportation condemned 10.1 acres of land owned by our client. That fixes the date of the value of the land in the before on that date. And it fixes the value on the same date of the take to pay for the 10.1 acres as well as to assess damages, which is your job because you are the judge of the facts, as to whether or not the remaining property owned by the Landowner has been damaged.

Now, let's talk a little bit about the property. On December 15, 2009, the Landowner owned 131.40 acres of land here in Horry County, which was fronted on and gained its value because it was located on the Intracoastal Waterway in the Socastee area of this County. They owned that. That land was intact. They had about 3400 feet of frontage on the Intracoastal Waterway. And for those of you that are familiar with properties in Horry County and how they gain their value, obviously, property on the Waterway is -- people like to look at the water, waterfront and amenities that go with it. They also had about 3800 feet of frontage on Peachtree Road, which is out in the Socastee area. At some point, if the Court deems it proper, you'll get a chance to look at that property. But it was intact, it was one piece, 131 acres of valued real estate property. It was zoned residential, R-1. So, on that date, everybody has agreed the highest and best use, even the

DOT, and that R-1, residential development, was the highest and best use of the property.

Now, on that date, the Landowner was served with a petition by the DOT that they were going to condemn 10.1 acres. And guess what? Guess where the 10 acres was gonna be. It was gonna be right through the middle of this tract of land. It was gonna be an extension of Highway 31 as you cross the Intracoastal Waterway and not only did the take go through the middle of the land, they now are building and it's under construction as we speak a bridge that's gonna go seventy feet up in the air. It's gonna severe this 131-acre tract into two separate tracts. The road is gonna be a controlled access road which means no access to the Landowner, right through the middle, seventy feet up in the air. And at that point in time, we will show you and we will prove to you that the way the DOT treated this land and this take brought into question their motives in the taking of this property. Now, what do I mean by that? They've been all over the scale of just compensation is but there are some requirements that apply to them that they have to comply with in order to be fair to the Landowner. They are required to go get an appraiser, hire an appraiser and appraise the property as it was in the before. And bear in mind, 2009 was kind of that the outer end of the recession. And both appraisers are going to deal with valuing the property as of that date so when you hear numbers about

the value you will know that it has already been adjusted by comps to the value as of 2009.

Now, what happens in this case is the DOT basically was gonna take the land without just compensation. That forced the Landowner to hire a lawyer, Mr. Shelton and myself, hire an appraiser, Mr. Jim Jayroe who is sitting in the courtroom, and Mr. Steve Powell, who was an engineer, because there was a question about what was just compensation. The Landowner said, my goodness, I got 131 acres of land and they're gonna put a ten-acre road, bridge, seventy feet up in the air, that is six lanes of travel, the speed limit is sixty miles an hour and they're gonna build that everybody says no harm was done. So, as a result, my client had no choice but to try to maintain his rights under the Constitution because he is entitled to just compensation and he should be paid just compensation not for any purpose other than putting him back in the same place monetarily as he was on the date of the taking, before all this happened, before all of this happened. So, you're going to hear testimony from the Landowner as to his concerns about the offer of just compensation. You're gonna hear testimony from Mr. Jayroe who is gonna tell us about appraisals and how you get to comps and some of you may be familiar with that process and some of you may not be but it will be a good educational process for you. You learn something about land values and how you arrived at values on

certain dates. And you will hear from Mr. Powell, who is going to talk to you about some of the aesthetic problems, how -- what a beautiful piece of property this was, what aesthetic value it had as it fronted on Intracoastal Waterway and what effect the bridge, the elevation of the bridge, had on this tract of land.

Now, the DOT initially basically said you're gonna -- they changed their minds and said, well, we'll just pay you for the dirt. Landowner said, well, you know, 10.7, you owe me for that under the Constitution, $407,000 and they said there were no damages to the remainder of the track. And the Landowner said, how can it be? You have effectively created noise from the bridge and you've created headlights, you have severed my tract of land into two separate tracts divided by a controlled access highway, which means no access. You have taken away my ability to effectively develop this as one tract of land. You have now subdivided into two tracts of land divided by a controlled access highway. Now, bear in mind, in the before December 15, '09, all the utilities were available to this tract, it was zoned R-1, it was ready to be developed. The recession, if we can it that, had slowed things down but the value of the property on that date, Mr. Jayroe will tell, was worth $9,198,000, and that's after taking into consideration the downturn in the economy. Now, what we will show you is that furthermore the view has been challenged

because now you've got a bridge. You wake up one morning -- you know, you own 131 acres and the next thing you look around and there's a bridge seventy feet high right through the middle of it.

So, what we are really going to try to say, tell you and show you is competent evidence which come from this witness stand and the exhibits the Judge puts into evidence, what we're going to show you is that the Department of Transportation, under its statutory duty and duty under the Constitution, never tendered just compensation. And, obviously, if you say $9,000,000 is a lot of money, it is, but that's what this property was worth on the date of taking according to Mr. Jayroe. Now, you'll be the judge of what the value is but once you arrive at the value of the property in the before then you will have the duty then, you determine what it is. You determine the value in the end from that value you decide how much 10.18 acres is worth. Mr. Jayroe will tell you his opinion is it's worth $70,000 an acre. Ultimately, DOT came to a number of $40,000 an acre. So, you -- between 70,000 and acre, you will make a determination of what the tract was worth and what the 10.7 acres or 10.1 acres is worth, how much its worth, and then you'll take a look and say, has the remainder of this tract been damaged in any particular. Has it been damaged? Is it the same as it was being 131-acre tract? Well, the things you can look at and

consider and give weight to if you hear testimony and you believe it, was the track severed into two tracts; is it gonna cost more money now to develop the tract, the two separated tracts? You will hear testimony about the circuity of travel. In the before it had good access off Peachtree Road. Now, that's been changed. You've got the bridge dividing it. You've got the noise consideration from the elevation of the bridge, going up to seventy feet in the air. How much noise does -- well, let me just say this to you, common sense, bring it to the courtroom. That's what this is all about. This is no dog-and-pony show, this is using your common sense to determine what's right. And so, the question is, is there noise? Well, they have finally agreed that noise is a factor although Mr. -- their appraiser, Mr. Haskell, first testified or his appraisal says that there was no noise and then they changed their mind and said, we'll do it -- guess what -- after Mr. Jayroe and Mr. Powell gave our appraisal to them and made them take another look.

All I'm saying to you and what I'm saying to you is you have the ability to judge the credibility and the believability of the witnesses. You can believe part of the testimony, all of their testimony or none of it. I can say this to you, if in fact the taking -- and let me be candid, DOT had a right to do what they did. They just haven't done right by paying just compensation. And we will hopefully show

you that when you get rid of -- when you deal with the take and the damages to the remainder that the Landowner has suffered $4,010,000 worth of damages. Now, hopefully, some people will say that's a lot of money, it is but we're here about just compensation. We didn't choose to be here. This is not our choice. But, if you're gonna take the land, then at least pay me the fair market value of the property and compensate me for the damages that you did to this tract of land. And, if you determine that, then I hope that you agree that $4,000,000 is a fair number that should have been offered by the DOT on December '09, December 15, '09.

You have a chance to do that. What I've said is not evidence; it's just merely the contentions. I'll try to give you a roadmap to help you as you listen to the testimony, understand the process. We go first. We have to prove to you that it's what the DOT has offered as just compensation is not adequate. We accept that burden. We agree to accept that burden. We have to prove to your satisfaction that just compensation is $4,010,000 and we gladly accept that because this is the Landowner's only day in court. What they are building out there is, as we speak, being built, that bridge. What's happening to the property is happening. It isn't what it used to be and it's up to you to decide what's fair and just compensation. And I thank you for your time and attention. Thank you very much.

THE COURT: Mr. McCutcheon?

MR. MCCUTCHEON: May it please the Court?

THE COURT: Yes, sir.

OPENING BY MCCUTCHEON:

MR. MCCUTCHEON: Mr. Foreman and ladies and gentlemen of the jury, we were introduced earlier. My name is Jack McCutcheon. I'm an attorney here in Conway, South Carolina and I have the pleasure of representing the South Carolina Department of Transportation. The South Carolina Department of Transportation is an arm of State of South Carolina. And, obviously, I can't bring the entire Department in here before you, so I have Mr. Bobby Martin who sits at counsel table with me, who is a program manager. And in the days to come, Mr. Daryl Hardwick, who is a regional guy from Florence, will be in here as the representative of the DOT.

As Mr. Bellamy has pointed out to you, what he just said in his opening remarks and what I'm about to say in my opening remarks do not constitute evidence in this case. The evidence that you're going to decide this controversy will come from the witness stand, from witnesses that will testify, any exhibits that may be introduced into evidence for you and you will take those exhibits and apply testimony to it and you reach a verdict in this case that speaks the truth. That's what your verdict means.

Now, I represent your state of South Carolina and it's a

big entity up in Columbia. I would like to point out to you, however, that the SCDOT is not the same thing as the Department of Public Safety, we have to go to get your driver's license and it makes you mad when you have to stand in line to get your driver's license. The DOT is in charge of -- the South Carolina Department of Transportation is in charge of the road systems in the State of South Carolina and, in this case in particular, the County of Horry and monies have to go towards roads and so forth. And, if you've read the newspaper lately, they say we need some more money to fix them and I don't know but what I don't agree with that, but that's another story for another day.

A highway condemnation case, ladies and gentlemen of the Jury, is nothing more than simply stated municipalities, state agencies, governmental agencies have a right under statute and the Constitution of the United States and the State of South Carolina to acquire property to use for the public good. And that includes the building of roads, the maintenance of roads and the upkeep of roads. Now, you may say, well, you know, I wouldn't want the DOT to come through and take any of my property but, unfortunately, we've got to have roads and we've got to build them somewhere. So, that's what eminent domain and this condemnation case is all about. We've got to have roads so people can get from point A to point B. And what we're talking about here today is another one of those roads

that's being built in Horry County for purposes of moving vehicles from point A to point B. You all may be familiar with South Carolina 31, which is commonly referred to as the Carolina Bays Parkway. That parkway now ends at Highway 544. The project that we're here today talking about and one of pieces of property involved in that is the extension of the Carolina Bays Parkway. It will take up where it left off, it will come around, it will go up and over Peachtree Road, it will go up and over the Waterway and it will come back down and come back in and tie into Highway 707, which is also being widened to a five-lane curbed and gutter highway so people can move to and from.

Now, having said that, we've had to acquire properties along and through where this road is going to be. And one of those properties that we have had to acquire is the property owned by Jericho State Capital and it fronts -- we don't have any dispute about where it is or what kind of property it is -- it fronts on Peachtree Road and it's 131.4 acres in the before and it backs up to the Waterway. And you're gonna hear testimony about distances and so forth and so forth and there's no question but what the road is going through this piece of property and there are going to be two remainders. One of them is going to be approximately thirty-five acres and the other one is going to be approximately eighty-four acres on each side of this highway. The highway starts up and at

the edge of this particular road is some eighteen to twenty-five feet above ground level and it's a bridge. It's similar to the bridge at 544 that goes over the Waterway. That's what it's like when we get done with it. But the State also says that when we do that, we have to pay people for the land that we take and we have to pay just compensation. And just compensation is defined as the difference in the value before as opposed to the difference in the value after, together with any damages to the remainder of the property. And that's what you're gonna be hearing about. There's no question about the fact that, you know, we're not here to say, no, we don't want the property or the Landowner says, no, I don't want it, you can't build it here. But what we now have to focus on, ladies and gentlemen of the Jury, is what is just compensation to the Landowner to be paid by the State of South Carolina and the DOT; that's the issue in this case. You're going to hear an appraiser for each side. We have an appraiser and I anticipate because they've already talked about it that the appraiser's numbers went from a low number up to a higher number, but the bottom line is, ladies and gentlemen of the Jury, the appraiser is gonna come in here now and testify as to his opinion about what just compensation is in this case and it's the sum of $998,000. That's the Landowner's appraisal. That's the one that we're going to court with, that's the one that you will use if you choose to use it, you

may not. That's your prerogative. Mr. Jayroe is gonna testify from the Landowner's standpoint in an appraisal that was done in the year of 2014 and it's $4,010,000. So, somewhere, ladies and gentlemen of the Jury, between those two numbers is where just compensation lies. Mr. Jayroe is going to say that there are damages to the remainder and that those damages to the remainder are based particularly upon a report by Mr. Powell saying that the major issues involving what creates the damage is noise and aesthetics.

Now, I want to point one thing out, Mr. Bellamy said that there's gonna be a lack of circuity of traffic and I think Mr. Bellamy knows that that's not an element of damage in a highway condemnation, circuity of travel. So, anyway ---

MR. BELLAMY: Your Honor, that's improper. That's question of law.

THE COURT: I appreciate that. You've indicated and Mr. McCutcheon has indicated to the Jury that what each of you has said is not evidence in this case. That'll come from the witness stand and the Court will instruct the Jury as to the law. All right?

You may continue, Mr. McCutcheon.

MR. MCCUTCHEON: Thank you, Your Honor. So, it's based on noise, for the most part, and aesthetics. You're gonna hear Mr. Powell testify. I anticipate that Mr. Powell is going to testify in regards to a couple of studies that he

uses upon which he bases the opinion he has about the increased noise levels and so forth. Mr. Powell is an engineer. No question about that and he's entitled to his opinion. But in this particular case, ladies and gentlemen of the Jury, we're going to bring to you an engineer who is a specialist and is a noise analysis specialist. That's what he does. And we're gonna bring him in here and he's gonna testify, he's gonna show you how he arrives at the noise levels and so forth on this particular piece of property and that in his opinion only a portion of the -- Mr. Powell says that the entire property is damaged because of noise. The noise analyst guy is gonna tell you that only a portion of it is, 19.7 acres is damaged by the noise. And you're gonna hear lots of terms and terminologies about noise and shadow zones and all this other stuff and noise increases and those kinds of things. But all that I ask that you do, ladies and gentlemen of the Jury, it's gonna be your determination, using your good common sense and common judgment as to what amount of money Jericho State Capital Investment Company is entitled to as a result of the DOT taking 10.18 acres.

All that I ask that you do is, is that Mr. Bellamy says that this is the Landowner's only day in court. Well, by the same token, it's the DOT's only day in court. We have selected you folks, not somebody else, we have selected you folks to determine how much money, and that's what you're

gonna have to determine. It's not a question of can we or can't we, it's a question of how much money is the Landowner entitled to as a result of building this road and this extension in Horry County and how much, if any, has it damaged his property. The DOT takes the position that it has not been damaged. But that's between the witnesses to tell you about, that's your province to determine whether there is damage resulting or whether there is not. I ask that you listen to us very attentively and I'm sure you will do that and all that I ask that you do is that when you finally get to resolve this case, you do what's fair for the Landowner and the Department.

Thank you so very much.

THE COURT: All right, ladies and gentlemen, we are going to break for lunch. I'm gonna ask that you be back in your jury room so we can come in at -- start the trial at 2:30. I'll leave it to the Bailiff to tell you when to come back to make sure that y'all can come out at 2:30. All right?

If you'll just to back to your jury room.

(REPORTER'S NOTE: Jury exits courtroom.)

THE COURT: All right. Gentlemen, 2:30. Thank you very much.

MR. MCCUTCHEON: Thank you, Your Honor.

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: The following takes place outside the

presence of the Jury.)

BY THE COURT:

THE COURT: Counsel, we are missing a juror and it is -- let me find it -- Juror Number 179, Judy Huston. So, that's -- on your strike sheet it's the very first person. So, I want to know from the Department of Transportation and the Landowner, do you want to wait another five minutes or so for her to show up or do you want to go straight to the alternate, what do y'all want to do?

MR. BELLAMY: I don't have any objection to waiting a little bit, Judge.

THE COURT: All right. Mr. McCutcheon?

MR. MCCUTCHEON: What number did you say, Judge?

THE COURT: The very first one, 179, Judy Huston, at the top of the page, on the random strike sheet.

MR. MCCUTCHEON: Yeah, it doesn't -- it doesn't matter to me one way or the other, Judge.

THE COURT: We'll just -- we'll just wait a little bit. We'll call her and see -- they've tried to call and there's no answer to her cell phone. So, anyway, we'll just wait a few minutes and then we'll go from there. All right?

MR. BELLAMY: Thank you, Your Honor.

THE COURT: Thank y'all.

*******OFF THE RECORD*******

(On the Record.)

THE COURT: The juror showed up. So -- all right. Is the Landowner ready to proceed?

MR. BELLAMY: Yes, Your Honor.

THE COURT: And Mr. McCutcheon?

MR. MCCUTCHEON: Yes, sir.

THE COURT: And your witness is here?

MR. MCCUTCHEON: Yes, sir.

THE COURT: Great. Ask the Jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: Counsel, y'all come up and talk to me.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

THE COURT: All right. Mr. Foreman, it appears the Jury has inquired about the taking of notes. Madame Clerk, if you want to -- we'll hand out a pen and notepad to you. While she's doing that, when you get the notepad, the very first thing I want you to do is write your name on the top of -- go ahead, ma'am; go ahead and hand them out -- write your name on the top of the notepad. All right? Everybody get one and a pen. All right. So, everybody write their name on the top of the pad. Make sure everybody's done that. All right.

Now, with the taking of notes comes with this caution, when some people are taking notes, they've got their head buried and they're looking at the notes and they're writing something down and they're completely oblivious and don't hear

the next question and the answer given by the witness which could be as important or much more important than what you're writing down. So, you've got to be able to make sure you and understand you've got to paying attention to what the witness says. That's the most important thing. Secondarily, making a note, but more importantly listening to what is said.

Also, we rely on the collective judgment and the collective wisdom of the entire jury panel. Just because somebody puts something down on a piece of paper and someone else or others remember it a different way does not make the piece of paper more important. All right? We rely on everybody's collective judgment and wisdom and memory in doing that. So, what that, please take notes but keep what I said in mind. All right? Thank y'all.

All right. First witness, please.

MR. MCCUTCHEON: We'd call Mr. Mike Barbee.

THE COURT: All right. Mr. Barbee, if you'd come around, please, sir.

And ladies and gentlemen, just so that you know, in a condemnation action, it is the requirement that the State call this witness first, then it will fall upon the Landowner to present their witnesses thereafter. All right? Go ahead.

MICHAEL WESLEY BARBEE, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: State your name for the Court, please, sir.

MR. BARBEE: Michael Wesley Barbee.

CLERK: Go ahead, Mr. McCutcheon.

DIRECT EXAMINATION OF MICHAEL WESLEY BARBEE BY MR. MCCUTCHEON:

Q: I'm over here, Mike.

A: Okay.

Q: Now, Mike, where are from, please?

A: I'm from Columbia, South Carolina.

Q: All right. And are you married, sir?

A: Yes, sir.

Q: Your wife's name?

A: Harriett Barbee.

Q: Do you have any children?

A: Three daughters.

Q: All right, sir. And what do you do for a living, Mr. Barbee?

A: I'm a civil engineer with the South Carolina Department of Transportation.

Q: All right. Could you tell us, Mr. Barbee, a little bit about your educational background starting with undergraduate school and taking us through the completion of your education?

A: I attended North Carolina State University from the years 1988 to 1992 and graduated with a BS degree in civil engineering in 1992.

Q: All right, sir. And after you graduated in 1992, where did you go to work, please, Mr. Barbee?

A: At that time I started work with the North Carolina Department of Transportation.
Q: All right. And what exactly did you do for the North Carolina Department of Transportation?
A: I was a roadway design engineer.
Q: Could you tell me what that means?
A: I designed the roads and set the plan and profiles, drew the plans up.
Q: All right. And how long did you do that, sir?
A: Approximately four years.
Q: All right. And what did you do after you completed that position?
A: At that point, I entered the private sector and worked for several private companies.
Q: All right. And what -- who were those private companies and what exactly were you doing for those private companies?
A: The companies were Florence & Hutcheson and Mulkey Engineers & Consultants and I was doing very similar work that I did with the North Carolina Department of Transportation, that being highway design.
Q: All right. And when you say -- I guess that's self-explanatory, Mr. Barbee, when you say highway design, you design all the ins and outs of a property or a road that's going to be established?
A: That is correct.

Q: And what all do you have to take into consideration in designing those roadways?
A: Well, we have to take into account the curvature of the road, the condition of the soils underneath, site distances, widths or pavement, widths of shoulders; it's a multitude of issues.
Q: All right, sir. And how long were you in the private sector?
A: Approximately, ten years.
Q: All right. And what did you do after you completed that ten years in the private sector?
A: I came to work with the South Carolina Department of Transportation.
Q: All right. And when did you come to work with the SCDOT?
A: In December of 2003.
Q: All right. And in what capacity were you hired at the SCDOT?
A: I was hired as a project manager at that time.
Q: All right. And tell me what a project manager is and does.
A: A project manager is responsible for the overall schedule of the project as well as the financial condition and staying within the budget.
Q: All right. And as an example, Mr. Barbee, if at the time you were -- they were getting to construct the Carolina Bays

Parkway, as a project manager, what would've been your function?

A: Again, the same type of tasks. For that particular project, I would've been responsible for making sure it stayed on schedule, making sure it stayed within the funding allowance.

Q: All right. And for what period of time, Mr. Barbee, were you a project manager?

A: On this particular project?

Q: No, sir. A project manager, you said you went to work as a project manager.

A: Right. Yes, sir.

Q: I'm trying to move up the chain.

A: Okay. Approximately from 2003 to 2009, I was in project management.

Q: All right. And as a project manager, were you involved with this project?

A: Yes, sir.

Q: And what was your involvement with this project, number one; and number two, what is this project called?

A: My role was the primary project manager and the project was known as the Carolina Bays Extension, also called SC Route 31 Extension.

Q: All right. Now, there is already in existence, is there not, Carolina Bays Parkway that runs from Highway 9 in North

Myrtle Beach to Highway 544 in Surfside?

A: That is correct. That length is about twenty-four miles in place already.

Q: All right. And so then, what was your involvement as project manager with this project, which was the extension of the Carolina Bays Parkway?

A: My role was pretty varied. I was responsible for initial programming, meeting with all the stakeholders, keeping all the stakeholders, including Horry County updated and again those same tasks I mentioned earlier, primarily schedule and budget.

Q: All right. As a program manager, were you -- were you responsible for going to any of the public meetings?

A: Yes, sir.

Q: Where people could voice their concerns, complaints or whatever?

A: Yes, sir.

Q: All right. And you did -- did you do that on this particular project?

A: Yes, sir. We had both public information meetings and public hearings.

Q: All right. Now, as you sit here today, Mr. Barbee, what is your position with the SCDOT?

A: Currently, I serve as regional production engineer for the Pee Dee region, which is a thirteen county region in the

northeast corner of the state.
Q: And in that capacity, what are your duties and responsibilities?
A: Similar to before, only now I have design under me as well and a series of program managers who manage projects in that region.
Q: All right. And since you got -- when did you get the new title?
A: November of 2009.
Q: All right. And since then, that's what you've been called?
A: Correct.
Q: And that's a big long term for what exactly?
A: Again, just overseeing the design and program management efforts for that thirteen county region including Horry County.
Q: All right. And were you in that capacity involved in those things you just talked about in regards to the Carolina Bays Parkway Extension?
A: Yes, sir.
Q: And to what extent were you involved in those things, the design, the build, the construction and whatnot?
A: I was pretty intimately involved. We hired the design out to a consultant who reported to me. They worked under our direction to design the plans. I was responsible for getting

it to Letting. I am not responsible for the construction, but again I'm involved from that schedule and budget standpoint.

Q: Okay. Who is responsible for the construction?

A: We have contracted that work out to a contractor and we also have assistance inspecting the project with our district staff in Horry County as well as consultants who assist in the inspection.

Q: All right. Were you called upon from time to time to consult on this project?

A: Yes, sir.

Q: All right. In what capacity?

A: Sometimes an issue will come up in the field that needs resolution in the office. Sometimes, things under the ground, for instance are not as detailed on the plans. So, we have to get together and figure out a remedial plan to address those issues.

Q: All right. Now, we've already established that this project was called the Carolina Bays Extension project?

A: Correct.

Q: And by extension, it extends from where to where?

A: It extends, as you mentioned, where it -- from where currently ends at SC Route 544 to Highway 707, crosses the Intracoastal Waterway and that length is approximately 3.8 miles.

Q: All right. And what was the original plan for the

extension of the Carolina Bays?
A: The original plan had a certain terminus on Highway 707. We had to kind of reengineer that due to some permitting issues with the Army Corp but it was originally set to tie in further north on Highway 707 and where it terminates now.
Q: All right. So, it starts -- I'm just gonna use start and stops ---
A: Okay.
Q: --- for the purposes of clarity. It starts at Highway 544; is that correct?
A: Correct.
Q: And it traverses down and it goes over Peachtree Road?
A: Correct.
Q: Then it goes over the Intracoastal Waterway?
A: That is correct.
Q: Now, where does it come back in and stop or intersect with Highway 707?
A: It -- if you're familiar with the area, it comes in just south of Friendship Lane, which is -- it's near Tern Hall, the subdivision there.
Q: All right. What -- the road comes -- Highway 707 coming out of Socastee presently is partially five-lane now; is that correct?
A: I'm not sure that any section is five lanes now. The entire corridor down to Highway 17 in Georgetown is under

construction to be a five-lane facility.
Q: What is the nature and the makeup of the road in front of that new convenience store where the turn-through comes through from 544?
A: That is currently a five-lane section, two lanes in each direction with a center median.
Q: All right. So, it is there already?
A: That portion is in place, yes.
Q: And then it extends, does it not -- and I ain't good on directions but -- it extends from there towards Murrells Inlet for a distance, does it not?
A: That is correct. That distance is approximately nine miles.
Q: All right. Now, where -- when you say nine miles, is that where it's going to hook up?
A: No, sir. That's the entire length of the current 707 widening project.
Q: All right. What I'm trying to find out is, Mr. Barbee, and apparently I'm not being very artful with my question. I'm trying to figure out right now 707 is two lanes?
A: That is correct.
Q: There's a small portion of it that's already five lanes?
A: That is correct, closer to Socastee.
Q: Right. And what I'm trying to figure out is approximately how far is it from the end of that to where

Carolina Bays is going to intersect with Highway 707?
A: I see your question. I'm not sure of the exact distance, somewhere between two and three miles.
Q: All right. And how is it going to intersect with 544 -- 707?
A: There will be a grade separated interchange at that location.
Q: All right. And what, Mr. Barbee, is the purchase -- purpose of the extension of the Carolina Bays Parkway that you have just alluded to?
A: The purpose is to improve mobility and connectivity into the South Strand.
Q: And that means good flow of traffic between -- connectivity and all the big words ---
A: That's correct. That means alternate routes into the South Strand to assist with the growing traffic and population growth.
Q: Right now, the traffic has to exit at 544?
A: That is correct.
Q: And it has to go down to either 707 by connector which is two lanes to go toward the beach?
A: That is correct; yes, sir.
Q: Or continue on 544 to the ---
A: That is correct, 17.
Q: -- in Surfside?

A: Yes, sir.
Q: And this would -- Highway 544 is between US Highway 501 and on down to Surfside. Is that, is that what we refer to as the five-lane road with curbs and gutters?
A: Yes, with sidewalks as well.
Q: All right. Now, this particular construction, however, is building a highway; is that correct?
A: Yes, sir.
Q: And how many lanes of travel will there be on the new roadway?
A: The Carolina Bays route?
Q: Yes, sir.
A: There will be three lanes in each direction.
Q: All right. And is that the same as is on the Carolina Bays existing?
A: Correct.
Q: And as it comes towards Peachtree Road, what happens to the roadway?
A: The bridge begins just north of Peachtree Road.
Q: And then it starts to elevate from there?
A: It starts to elevate from there to each the required clearance over the Intracoastal Waterway.
Q: All right. And then it goes over the Waterway and then I would assume it comes back down?
A: It comes back down before Enterprise Road on the south

side of the Waterway.
Q: And sitting in front of you, Mr. Barbee, is a rendition and I will submit to you that this side down here is Peachtree Road. Are you familiar with this exhibit?
A: Yes, sir.
Q: And what is this exhibit supposed to depict, Mr. Barbee?
A: The current representation shows the subject tract as it appears in the before condition before the construction of it.
Q: And then back here, we have the Intracoastal Waterway?
A: That is correct.
Q: Now, you mentioned a minute ago, and I'm not gonna get specifically into distances with you because I'll do that with another witness, but the Carolina Bays Parkway is gonna go across this piece of property, is it not?
A: That is correct.
Q: And then there will be two remainder pieces; is that your understanding?
A: Yes, sir.
Q: One is approximately 34 acres?
A: Yes, sir.
Q: And one is approximately 84 acres?
A: That's correct.
Q: And those will be two remainder tracts, correct?
A: That is correct.
Q: And are there any changes being made on Peachtree Road to

that remaining frontage along this piece of property?
A: No, sir.
Q: Now, the highway itself, however, does have some limitations, does it not, Carolina Bays?
A: Yes, sir.
Q: Are you familiar with the term no access?
A: Yes, sir.
Q: And what are -- how is -- the current highway, Carolina Bays, is what we refer to as a limited access project?
A: Yes, sir.
Q: And what does that mean?
A: That means that access is only allowed at interchange locations and also there would be no driveway connections, for instance, allowed.
Q: And what's it gonna be -- what's the extension gonna be?
A: The extension will be similar, a controlled access.
Q: All right. But obviously, over this piece of property, there's not going to be any access, correct?
A: Correct.
Q: For not only that reason but for another reason?
A: Correct. There would be no access from the Parkway to the subject tract.
Q: All right. And one of the reasons is it's a controlled access highway?
A: Correct.

Q: The other reason is it's gonna be elevated?
A: Correct.
Q: Now, what is -- as it -- as it goes across the northern boundary line of the property, and it goes across, where -- how far back does the bridge start to elevate? When it goes from ground level and starts to elevate?
A: The bridge begins right at Peachtree Road, so the elevation starts just on that north side where your finger is.
Q: The north side?
A: Yes, sir.
Q: All right. And what -- what is the -- what type of -- what about the elevation of the berms or so forth? Don't you have to build it up before you can start the bridge?
A: Correct. On that north side, the amount of roadway filled to bring the road up to proper grade is approximately five to six feet.
Q: Is what?
A: It's approximately five to six feet on the north side.
Q: All right. So, my question becomes, as the bridge crosses this property line, the bottom of the bridge is how far from the ground?
A: At the property line, it's approximately twenty feet.
Q: All right. And that's from the bottom of the bridge?
A: That's to the bottom of the bridge, yes, sir.
Q: What is it from the top of the bridge?

A: To the top of the bridge, it's approximately twenty-seven feet to the riding surface.
Q: All right. And what the bridge -- how wide is the actual bridge itself?
A: It's just slightly under 118 feet, 117.75 feet exactly.
Q: The bridge itself will have how many lanes?
A: It'll have three lanes of traffic in each direction.
Q: All right. What separates, if anything, Mr. Barbee, those lanes? I noted on some portions of Carolina Bays you have a grass median; is that correct?
A: That is correct.
Q: You're not gonna have a grass median for the bridge?
A: No, sir.
Q: All right. So, what separates the northbound traffic flow from the southbound traffic flow?
A: There will be a small barrier wall between the lanes in addition to shoulders on each side to give added width.
Q: All right. And how high is this barrier wall between the lanes?
A: It's about two feet, eight inches with a glare screen on top of approximately two feet, so about a total of four feet, eight inches.
Q: Now what about the outsides of the bridge?
A: They'll be bridge rails on either side, those being similar height, approximately two feet, eight inches with no

glare screen.
Q: What is the word parapet mean?
A: Parapet just means a bridge wall.
Q: Okay. And that's what's gonna be on either side of this?
A: That is correct.
Q: Now, is this bridge going to continue to elevate as it gets to the north property line?
A: Yes, sir.
Q: And what really throws me off as an Horry County native that ain't real smart sometimes is I've always thought that if you go from Conway to the beach, you're going from west to east but that's not really true, is it?
A: No.
Q: I'm actually going from south to north?
A: That's correct.
Q: But the water, you know, the Waterway is here.
A: That's correct.
Q: And the ocean is somewhere down here?
A: That is correct, yes.
Q: And back here is Conway?
A: Correct.
Q: And over here somewhere or up here somewhere is Highway 544?
A: That is correct.
Q: Now, the bridge over 544, Mr. Barbee, will it be similar

to this bridge?
A: Yes, sir.
Q: Except it doesn't have six lanes, it has four?
A: That's correct.
Q: What about height?
A: The heights will be similar over the Intracoastal Waterway.
Q: Okay. Now, this is what the piece of property looks like in the before, correct?
A: Correct.
Q: And your understanding is, are you not, that they're taking 10.18 acres ---
A: That's correct.
Q: --- of the property?
A: Yes, sir.
Q: From the original ---
A: Yes, sir.
Q: --- 131.4?
A: Correct.
Q: Now, I want to flip this over, Mr. Barbee. And what does this sheet depict?
A: That overlay depicts the amount of take required to construct the project as shown in green.
Q: All right. And this part up here is a remainder of the property?

A: That's correct.
Q: Are there any restrictions concerning access along Peachtree from this corner to the edge of the right of way?
A: No, sir.
Q: And then this piece down here will be also a remainder piece?
A: That is correct.
Q: And it has certain footages along Peachtree Road?
A: That is correct.
Q: Are there any limitations from the edge of the right of way down here as far as normal access and so forth?
A: No, sir.
Q: All right. So, they have access?
A: That is correct.
Q: Now, obviously, though, Mr. Barbee, there's gonna be a bridge elevated across. Now, I've already asked you how far the bottom of it was and you told me approximately twenty feet. Let me ask you the same question about, as it gets to this property line, what is the footage above ground of the piece of property?
A: At that location, at the Waterway edge more or less, it's approximately seventy feet.
Q: Seventy feet. And what about -- what about -- now, this is twenty and this is seventy, what is the top of the bridge approximately?

A: To the riding surface at the Waterway, it would be approximately eighty-one feet.
Q: And what would be over here?
A: Approximately twenty-seven feet.
Q: Twenty-seven?
A: Yes, sir.
Q: And it would be twenty underneath, twenty-seven on top and that kind of stuff?
A: That is correct.
Q: Now, you've already testified, sir, that this is a controlled access highway.
A: Yes, sir.
Q: What is the speed limit on this highway going to be?
A: The speed limit will be set at sixty miles per hour.
Q: Sixty?
A: Yes, sir.
Q: Is that what it is as it approaches 544 now?
A: Yes, sir.
Q: All right. But then as it gets further away from 544 it increases, correct, to sixty-five or seventy going towards Myrtle Beach.
A: I believe it's -- there are some sections where it does vary. I'm not sure that it increases to a posted speed of seventy or not but sixty is the predominant speed through the corridor in place.

Q: Now, what's going to be underneath this bridge?
A: There will be a series of concrete columns at various locations to support the bridge.
Q: All right. And how many concrete columns are there going to be?
A: In total on the tract approximately fifty-four.
Q: Okay. And are those -- how many lines of columns?
A: There are approximately thirteen different lines of columns that comprise that fifty-four total.
Q: And how many columns are in each one?
A: Approximately four.
Q: All right. Could you tell us what the distance between each column is?
A: Probably eight to ten feet.
Q: All right. You're talking about ---
A: You're talking about along the tract?
Q: Now, what I'm -- you just answered one question, going this way, you said approximately eight to ten feet apart?
A: Correct.
Q: What are they this way?
A: Approximately 115 feet space.
Q: All right. So, there's 115 feet spacing between each one of the columns as we go across?
A: That is correct.
Q: Now, how are you going to account for the drainage on

this bridge, Mr. Barbee?
A: The drainage will be handled several ways. Throughout the bridge, there will be drainage called scuppers which are basically just holes in the bridge deck that allow the water to seep out over the Waterway. Due to Army Corp of Engineers regulations, we're not allowed to discharge directly into the Waterway, so we'll be carrying that drainage off away from the Waterway. It'll come down on the subject tract and at various locations it'll either go through those scuppers I mentioned and disperse into the air or it'll disperse into a PVC pipe that will run down those columns I mentioned previously to settle into the soil.
Q: And where do those PVC pipes run?
A: They are attached to the columns.
Q: All right. And approximately -- do you know approximately how many of them there are?
A: They're -- not in total as far as column locations there are five different areas all across the subject tract where we will be attaching that PVC pipe to the bridge support.
Q: Now, when you say across the subject tract, are those things confined to your right-of-way or does it go outside of the right-of-way, the water?
A: The water, it will -- eventually, it'll go outside our right-of-way because everything is going down to the Intracoastal Waterway but predominantly is going to be stay up

under the bridge and ether soaking into the soil or going surfacely to the Waterway.

Q: Now, do you put anything at the ends of those?

A: Wherever we have a PVC pipe downspout, as we call it, there is a thick rock pad to prevent erosion.

Q: Okay. And then, if I understand, Mr. Barbee, will there be anything on the ground to designate where the edge of your right-of-way yes?

A: There will be markers to denote the corridor the DOT has ---

Q: What kind of markers?

A: It'll be a small concrete post, approximately 6 to 8 inches off the ground.

Q: Now, Mr. Barbee, you are a civil engineer?

A: Yes, sir.

Q: And you're not a hydrologist?

A: No, sir.

Q: What is a hydrologist?

A: A hydrologist is someone who, in my case, would deal on a highway project to determine drainage areas, how much water is coming to the site, how much water to account for from the highway project.

Q: All right. And when a project is being contemplated are designed, Mr. Barbee, are there certain requirements as to what studies have to be done by the DOT in order to acquire

and build a roadway?
A: Yes, sir. We are required to do fairly extensive drainage studies to make sure that, number one, we're not flooding the project; also, to make sure we are adequately accounting for any water that may be coming to the project that may be re-channeled as part of the project.
Q: What about any of the studies? Did you do any other kind of studies? What about traffic?
A: Yes, sir. We did a number of studies including a traffic study for this road.
Q: Okay. Any other -- what about environmental impact studies?
A: We did a environmental assessment in working with Federal Highway Administration.
Q: What exactly is Federal Highway Administration, Mr. Barbee?
A: The Federal Highway Administration is the oversight federal agency for the South Carolina Department of Transportation.
Q: All right. Does the Federal Highway Authority, or whatever it's called, promulgate rules and regulations as to the building of highways?
A: Yes, sir.
Q: Is this particular project, Mr. Barbee, subject to those because there is federal money being involved?

A: There is a small portion of federal monies that does make it subject to federal highway regulations.
Q: Okay. In addition to that, does the South Carolina Department of Transportation also have policies and procedures in regards to building and maintaining highways?
A: Yes, sir.
Q: And in regards to that, Mr. Barbee, you talk about the fact that there are traffic studies; is that correct?
A: That is correct.
Q: And I'm trying to figure out how to word this. When you do these studies and so forth, do you use a particular year somewhere out in the future to determine what the traffic counts are going to be?
A: Yes, sir, we do.
Q: Do you know what that year is with this project?
A: For this project, I believe we used 2030.
Q: 2030?
A: Yes, sir.
Q: And what were the projected traffic counts for this particular bridge or this highway when completed?
A: At 2030, I believe it was approximately in the 33 to 35,000 vehicles per day range.
Q: Which means that it's anticipated that 33,000 vehicles will go across that bridge on any given day?
A: Yes, sir, in 2030, correct.

Q: Is that similar to 544?
A: Traffic volumes are probably slightly less on 544 but similar in nature, not exact but very similar amount of traffic flow.
Q: And embodied in those studies, Mr. Barbee, that have to be done although you may not do them, do they also have traffic noise studies?
A: It's project depending but we do for larger projects we will do a noise study of some degree, yes sir.
Q: And does that noise study have to comply with the Federal Highway Administration standards?
A: Yes, sir.
Q: And/or the South Carolina standards?
A: That is correct.
Q: What is the purpose of doing the noise study?
A: The purpose of the noise study is to determine if the highway will have any detrimental noise impacts to any properties or, for instance, homes, businesses, churches along the corridor.
Q: Now, you are a civil engineer, Mr. Barbie?
A: Yes, sir.
Q: Do you hold yourself out as a traffic analyst engineer?
A: No, sir.
Q: Why not?
A: That's just never been my area of expertise. I have

primarily been in road design and project management.
Q: All right. And are there some people who are trained to do exactly that?
A: Yes, sir. The consultant teams and those with the DOT are trained to do that.
Q: I believe I also ask you whether or not you were a hydrologist?
A: No, sir.
Q: You said you were not?
A: Correct.
Q: So, as a civil engineer, Mr. Barbee, what exactly is your role in the design and build of a highway similar this one, as a civil engineer?
A: As a civil engineer in the project management role, my responsibility is to work with those you just mentioned, the hydrologist, the road engineers, the noise modelers, the environmentalists to bring it all together to get everything done. I'm ultimately responsible for keeping the project on schedule and getting it let, the construction.
Q: What is the anticipated completion of this project, Mr. Barbee?
A: Based on the best information we have now, summer of 2017 is the anticipated completion date.
Q: And is that just for this or also for 707?
A: That -- 707 is very similar, in that summer of 2017

timeframe.

Q: Thank you, Mr. Barbee. I think that's all the questions I have. Please answer any questions Mr. Shelton may have.

THE COURT: All right. Mr. Shelton?

CROSS EXAMINATION OF MICHAEL WESLEY BARBEE BY MR. SHELTON:

Q: Good afternoon, Mr. Barbee.

A: Good afternoon.

Q: We've met several times before, have we not?

A: Yes, sir.

Q: And you are here, just so we're clear, as not just a representative of the DOT but as an employee of the DOT; is that correct?

A: That is correct.

Q: And that's been, as we heard Mr. McCutcheon asked you a few minutes ago, that's been pretty much the nature of your career, working for government agencies building roads?

A: Predominately, yes, sir.

Q: Did you bring your plan sheets with you today?

A: I do have a set of plans, yes, sir.

Q: Can you tell me what date of these sheets is?

A: This set of plans is dated July 15th of 2011.

Q: Okay. Can you tell me from those plans or from you exhibit that you made what the Peachtree frontage on this property is in the before? How much, how many feet of frontage to this tract have on Peachtree Road?

A: I'm not exactly sure of that frontage. I would say greater than 2000 feet but, again, I'm not exactly sure.
Q: Can you not tell from your plan sheets?
A: No, because the entire tract is not contained -- these plans depict only that corridor and not this entire tract.
Q: Okay. But you would estimate 2000 feet?
A: I would estimate probably 2000 to 2500 feet. Without scaling it exactly, I wouldn't know for sure.
Q: Okay. And it's roughly the same on the Intracoastal then as it is on Peachtree Road with the exception of this section?
A: Correct, with the exception of the carved out tract that you just referenced. Those are privately owned lots, homes, I believe, right on the Waterway.
Q: Okay. The remainder of this tract is vacant?
A: To my knowledge, yes, sir.
Q: Did you know how many cars travel along Peachtree each day?
A: I'm not exactly sure of the precise traffic count on Peachtree.
Q: Have you ever visited this property before construction actually began?
A: Yes, sir.
Q: So, you are familiar with what it was like before the bridge starting coming along?
A: Yes, sir.

Q: How would you describe the area?
A: I would describe the area as very rural in nature and I would describe Peachtree Road as a lower volume traffic road.
Q: A pretty quiet place?
A: Generally, yes.
Q: How far would you estimate this tract is from 544?
A: 544 is probably, maybe a mile and a half toward the top there, as Mr. McCutcheon referenced earlier.
Q: Now, when you're down here around this tract of land, can you see the bridge at 544?
A: No, sir.
Q: Can you hear it?
A: I'm not exactly sure. I've never listened to be honest so I can't fully answer that question.
Q: And you testified on direct and I believe you did in your deposition as well that Peachtree Road itself is not changing in any way in the after?
A: No, sir.
Q: Okay. But in the after, as Mr. McCutcheon was explaining, there's gonna two separate tracts of land that Jericho will own?
A: That is correct.
Q: Will they be able to get from one tract to the other without leaving the property and getting onto Peachtree?
A: Under current scenario, no.

Q: That's because of -- we've been talking about the controlled access?
A: That's correct.
Q: Is there gonna be anything constructed below the bridge other than the columns holding it up?
A: No, sir.
Q: Okay. So, you'd be able to see the other tract of land but not get to it?
A: Well, I would qualify that to say it's situationally dependent. In other locations across the state, we have allowed access under our bridge but I couldn't say here today that we would allow it. It would be evaluated on a case-by-case basis.
Q: You've condemned this property and taken possession of it and DOT now owns it; is that correct?
A: That is correct.
Q: So, the Landowner doesn't have any legal right -- as we sit here and you're under oath -- to go underneath that bridge?
A: At this time, no, sir.
Q: And there's no guarantee they ever will?
A: That, I do not know. It depends on if a request was made or not.
Q: You told us the bottom of the bridge is about twenty feet as it enters our property line; is that correct?

A: That is correct.
Q: And then throughout the property, if you're looking toward the other remaining property, there's gonna be a bunch of columns; is that correct?
A: That is correct.
Q: I'm going to show you some photos that's been marked as Landowner's Exhibits One through Sixteen. Without objection, I'll introduce it into evidence. Tell me, is that the columns that we're talking about?
A: Yes, sir; it appears to be.
Q: This is a picture taken at a distance of several of those columns; is that correct?
A: Yes.
MR. SHELTON: Your Honor ---
THE COURT: All right. Well, have they been marked by the court reporter?
MR. SHELTON: Yes, sir.
THE COURT: Mr. McCutcheon?
MR. MCCUTCHEON: Sir?
THE COURT: Plaintiff's One through Sixteen; is that correct? Have you looked at Plaintiff's One through Sixteen ---
MR. MCCUTCHEON: Yes, sir.
THE COURT: --- those photos?
MR. MCCUTCHEON: Yes, sir. And I don't think those are

the ones that I had any problem with. Those are the ones ---

THE COURT: All right. Let's make sure. How about look at them and make sure first.

MR. MCCUTCHEON: I have no objection to these.

THE COURT: All right. So, Plaintiff's One through Sixteen are in evidence without objection. You may publish them to the Jury if you so choose.

PLAINTIFF'S EXHIBIT NUMBERS ONE THROUGH SIXTEEN ADMITTED INTO EVIDENCE

MR. SHELTON: Any objection to my handing them to the Jury?

THE COURT: I said there's no objection to publication if you so choose.

MR. SHELTON: Thank you.

BY MR. SHELTON:

Q: Now, this first one is a picture at a distance of -- how many columns do you see in it?

A: It appears from what I can tell to be four individual rows of columns.

Q: For each so there's a total of sixteen?

A: Approximately, yes, sir.

Q: Do you recall at your deposition I asked you how many columns were gonna be constructed for this bridge?

A: Yes.

Q: What did you tell me?

A: I cannot recall the exact amount other than my deposition was in error and I attempted to correct that through erratum.
Q: Could it be that you said six?
A: Yes.
Q: You said there would be six columns?
A: Yes.
MR. MCCUTCHEON: Your Honor, can we approach the bench just a minute, please?
THE COURT: Yes, sir.
(REPORTER'S NOTE: A bench conference was held off the record in the presence but out of hearing of the Jury.)
BY MR. SHELTON:
Q: Mr. Barbee, when you received your deposition in the mail and reviewed it, did you note that error?
A: I believe I did, yes, sir.
Q: Tell me, if you will, what these next few pictures represent?
A: These represent the ongoing construction of the columns.
Q: And what is the metallic structure?
A: That is a -- what is called a steel rebar cage that goes -- that concrete is poured around the cage to give it added strength.
Q: Okay. And how wide are these columns that we keep referencing?
A: It varies in width for the entire length of the bridge.

Some of them are around seven feet wide, others up to eight and a half feet, I believe, is the largest.

Q: And there's gonna be how many of them?

A: On this tract, fifty-four.

Q: Mr. Barbee, these remaining exhibits, which are Four through Sixteen, describe if you will what they reflect? That is what the, the parcel we're talking about right now looks like if we go out there today?

A: I'm not sure what it looks like currently, ongoing construction at this moment, but these are similar pictures to the last few I just looked at showing construction of the columns with the reinforcing steel.

Q: When did you last visit the site?

A: Probably early November.

Q: Okay. So, this would be advance construction beyond what you witnessed in early November?

A: There would -- yes.

Q: And what is this next one? This is Landowner's Exhibit Number Eight. What is that?

A: That appears to be the beginnings of the -- what is called the bridge cap construction. I can't get the orientation here, so I'm not sure where it's at. Perhaps it's at Peachtree Road. If you could ---

Q: Is that what the bank -- embankment you were describing over here would look like?

A: Yes, sir.
Q: And that's what -- it's five or six feet high of embankment?
A: Well, the five or six feet, what I referred to earlier, is what they're gonna bring in on this side of Peachtree Road, not ---
Q: Tell me on this exhibit, over here?
A: Yes. That is correct. It's nothing to do with the bridge construction itself.
Q: Is it not the incline up to to get clearance to get cars over Peachtree Road?
A: Yes.
Q: How far off the ground does the bridge have to be as it begins to cross Peachtree Road?
A: As it begins to cross, the lowest point would be twenty feet.
Q: Okay. So, this is where they're gonna start the bridge across the road. So, is it safe to say that that has to be about twenty feet high?
A: That is correct.
Q: The remainder of these exhibits, Landowner's Sixteen, is ongoing construction as well but tell me, if you will, what this exhibit is and tell me what the number is on the back of that?
A: This is Exhibit Number Eleven.

Q: And what is Exhibit Number Eleven?
A: That appears to depict some construction at the Intracoastal Waterway and the contractor's temporary access across the Waterway.
Q: Okay. So, from this picture, we're on the tract, the subject property, looking across the Waterway?
A: It would appear, yes.
Q: Okay. And if they built a structure out there in the middle or at the Waterway in order to work from?
A: Yes. That's a temporary construction platform.
Q: And how long will that be in place?
A: That is entirely dependent upon the contractor's means and methods to construct it. They have permit that would basically allow them to keep it there through the life of the project but that depends on how they prosecute the work as to long that will remain.
Q: Okay. You said a moment ago that the highway speed on this portion of what you're building of Highway 31 is going to be sixty miles an hour; is that correct?
A: That is correct. It will be posted at sixty miles per hour.
Q: What was the design speed?
A: Design speed was seventy.
Q: And what's the difference between those two speeds?
A: That's ten miles an hour just to allow for a factor of

safety.
Q: So, it's assumed that traffic will exceed the posted speed?
A: Likely, yes.
Q: If you're coming across Peachtree on this bridge when it's completed, when you just get across Peachtree, from that point, how long would a car have to drive to ever get back to this tract of land?
A: I do not know.
Q: Is there an exit there?
A: No, sir.
Q: Is there an on-ramp there?
A: No, sir.
Q: Can you estimate how far a car would have to drive to get back to this property?
A: I could not provide an adequate estimate. I know from 544 down to 707 it's a length of 3.8 miles. This is approximately a mile on the new alignment, the new Carolina Bays alignment, so it'd be 2.8 miles to get to Highway 707 and approximate -- from 707 another two miles up to Enterprise Road but I don't have the information. I couldn't compile it in my head right now.
Q: Can you tell what traffic pattern you'd likely take to get back to this property. You just told me stay on this new road until you got to 707.

A: Yes. Stay on new road, get off at Highway 707 and from that point there are a number ways. I'll go north on 707, so you could go north on 707 back to Highway 544, from Highway 544 you could cross back over the Waterway and then turn down -- I'm not sure of the name of the road but it's the road that the drawbridge is on.

Q: The swing bridge?

A: The swing bridge, yes, sir. And access Peachtree Road in that manner. But again there's several ways you could go.

Q: Any one of them is several miles long?

A: I would say, yes, sir.

Q: And that's true in both directions for traffic coming over this bridge?

A: Yes.

Q: And you told us a moment ago that the ADT's or the number of cars average daily trip cars that are going to be over this road in the design year is 33,000 cars, is that -- is that --

A: I will correct that because looking at the plans I see it's 35,000, so ---

Q: Okay.

A: --- 35,000 is the modeled estimate of traffic in 2030.

Q: And you're gonna six lanes of cars in each direction with the speed limit of sixty miles an hour?

A: Three lanes in each direction with a speed limit of sixty

miles per hour.
Q: And by comparison, 544 has fewer lanes?
A: Depends on where you're at on 544. The bridge, yes, sir, fewer lanes on 544.
Q: It's got two fewer, one to ---
A: Two fewer, yes, sir, two total fewer.
Q: That's got a lower speed limit?
A: Yes, sir.
Q: And it's got a lower traffic count, does it not?
A: Yes. I'm not sure of the exact, but yes.
Q: So, there's fewer cars going slower and fewer lanes of traffic?
A: That's correct. 544 is -- there's no control of access there. There are numerous, you know, accesses, homes, businesses, et cetera, so they're different classifications of roadway so I would expect to see different speeds and numbers of traffic based on the control of access issue.
Q: Now, Mr. McCutcheon spoke with you at length about what steps you need to take before you can build a project and having meetings and getting analyses performed. Do you take -- did you take part in that with this project?
A: Yes, sir.
Q: And what was your role in those -- particularly those studies that were done?
A: I would say I was the -- I was the overseer, I was

responsible for getting it done, making sure others were doing it so that we could meet the schedule.

Q: Okay. Was a sound analysis done for this project?

A: To my knowledge a full sound analysis was not done.

Q: Okay. Do you know if any sound readings or noise readings were taken on or near this tract of land prior to condemnation?

A: I'm not aware of any. A noise -- based on federal highway requirements, there's different qualifications or different rules to do noise studies. A noise analysis was done but it was of the type that no field work was done. It was all based on modeling.

Q: So, no one ever -- that you're aware of and you were the guy in charge -- no one ever went out here, Tract 11 of the Jericho property, and measured the noise before filing a condemnation and taking the property in condemnation?

A: That is correct.

Q: So, it's pretty safe to assume then there were no noise receptors on this property on December 15th of 2009?

A: Not necessarily -- we can identify potential receptors without doing a noise analysis.

Q: No, I'm talking about the actual device that you use to get the ambient background noise? None of that was there on December 15, 2009, was there?

A: To my knowledge, that is correct.

Q: And that's an important date because that's when your lawyer filed this condemnation action; is that not correct?
A: That is correct. I'm not familiar with the exact date of condemnation but ---
Q: Well, you didn't have any noise analysis when I took your deposition in July of 2013, did you?
A: No, sir.
Q: Okay. So, the noise analysis that Mr. McCutcheon keeps talking about has to have been subsequent to the condemnation; is that not correct?
A: Correct.
Q: Okay.
A: I would like to say that we had a noise study but not a noise analysis prior to condemnation, so we did our due diligence as required by Federal Highway to conduct a noise study to determine the effects of it but it did not include field -- empirical field data.
Q: When you say you modeled it, that just means you're using a computer program to estimate it; is that correct?
A: That is correct. Yes, sir.
Q: So, you didn't go out and take ---
A: No, sir.
Q: Okay. You talked a moment ago about how the drainage is going to work on this bridge that goes over the Intracoastal Waterway. Do you know how much increased impervious surface

there is both spanning this property and spanning the Intracoastal or to a point anywhere where the drainage will be coming back towards this property?

A: I'm not sure of the increase in the impervious area but that -- the length across the property is 1500 feet, the width of the bridge is 120, so that roughly, that area calculation would be increased basically of all bridge deck across the property.

Q: Okay. And correct me if I'm wrong but you said a moment ago from the point where the span across the Intracoastal Waterway arcs some of the water will go towards the beach, the rest of the water is gonna be coming toward this tract of land.

A: That is correct. Somewhere over the Waterway there is what's called a high point where a drop of water is going towards the ocean or it's going back toward the north in this case.

Q: Okay. And all of that water from wherever the high point is that on our side of that high point is gonna come back toward Tract 11; is that not correct?

A: That is correct.

Q: And then I believe you testified to a moment ago that at some point it's gonna get dropped in the river or a riprap or rocks on the ground.

A: Depending on the location and the height, it'll either

dispersed into the air through those bridge deck drains or it'll run down that PVC pipe to that rock that you just mentioned.

Q: And it's gonna get to the ground whether it disperses runs down the pipe; is that correct?

A: Correct, yes, sir.

Q: Okay. It's just whether it falls through a hole -- a scupper is just a hole in the bridge?

A: That is correct.

Q: Or a vent and goes down the pipe?

A: That is correct.

Q: But at the end of that process, that water that was going to land in the Intracoastal Waterway is now being collected and channeled back towards Tract 11?

A: That is correct.

Q: Has DOT done a drainage analysis under that bridge, gone out and study where that water goes and what it's gonna do to Tract 11?

A: Yes.

Q: Did you perform that?

A: No, sir.

Q: Do you know what the end result of how the water will be handled at the property line? Is there anything to prevent it from coming onto Tract 11?

A: I'm not sure I understand the question. Could you repeat

that?

Q: The water that DOT is channeling back toward this tract is released through these scuppers which -- how high are those scuppers?

A: It depends because the elevation is constantly changing.

Q: So there's a seventy-foot one here, a sixty-foot one, so on and so forth?

A: Well, there wouldn't be a seventy-foot one but there would be -- basically anything less than about twenty-five feet, we're gonna put in PVC pipe down the column. Anything greater than twenty-five feet, we're gonna allow it to disperse in the air. So, it depends on where you're at on Tract 11.

Q: Well, you said this one was seventy-feet high right here?

A: That's correct.

Q: So, there could be scuppers as high as seventy feet across the entire area and it's just dropping water that's been collected up here onto this property. Once he gets onto this property is there anything to prevent it from going off of this property?

A: No, sir. It's gonna filter out through the soil and go toward the Waterway as it did in the before.

Q: Is there anything to prevent it from leaving the DOT right-of-way onto Tract 11's property?

A: No, sir.

MR. SHELTON: I have nothing further for this witness, Your Honor.

THE COURT: All right. Mr. McCutcheon?

REDIRECT EXAMINATION OF MICHAEL WESLEY BARBEE BY MR. MCCUTCHEON:

Q: Mr. Barbee, what do the initials FHWA stand for?

A: That's Federal Highway Administration.

Q: And this noise study that Mr. Shelton ask you about -- is there a difference between a noise study and the noise analysis?

A: Yes, sir, depending on the type of project and the requirements of each project.

Q: Does the FHWA require a noise study on this particular tract?

A: Yes, sir.

Q: And was it done?

A: Yes, sir.

Q: All right, sir. And was it done within the parameters of what the policy says is supposed to be done?

A: Yes, sir. Federal Highway approved it so it met their requirements.

Q: But since that time, Mr. Barbee, there has actually been a noise analysis by a noise analysis engineer ---

A: Correct.

Q: --- correct?

A: Yes, sir.
Q: And both the Federal Highways Administration and the South Carolina have policies dealing with noise and noise abatement ---
A: That is correct.
Q: --- on these road projects?
A: That is correct.
Q: All right, sir. And there are certain things that are contained in these documents that guide what can be done and what can't be done?
A: That is correct.

RECROSS EXAMINATION OF MICHAEL WESLEY BARBEE BY MR. SHELTON:

Q: Mr. Barbee, I just have one question for you. When a noise analysis was finally performed at DOT urging or expense, did that analyst find that there were indeed negative impacts to this property as a result of noise from this bridge?
A: Yes.
Q: Thank you. I appreciate it.

THE COURT: All right. Mr. McCutcheon, do you wish the witness to step down next time?

MR. MCCUTCHEON: Yes, sir.

THE COURT: All right, sir. You may step down.

Mr. Shelton and Mr. McCutcheon and Mr. Bellamy ---

MR. BELLAMY: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record

in the presence but out of hearing of the Jury.)

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, why don't you take a short break and we'll come back in. Just leave your pads and pens in your seats, please.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the Jury.)

THE COURT: All right. Ms. Shelton, just so we can alert the Jury, from your perspective, your direct examination, how long do you think that might take, approximately?

MR. SHELTON: Forty minutes, forty-five minutes.

THE COURT: Okay. Mr. McCutcheon?

MR. MCCUTCHEON: My cross?

THE COURT: Yes, sir.

MR. MCCUTCHEON: Of this witness, I don't know, probably thirty minutes, maybe.

THE COURT: All right. Thank you.

MR. SHELTON: I would really prefer not to leave him on the stand overnight if at all possible.

THE COURT: Well, no, we're not gonna do that. If we get started, we're gonna go till he's done.

MR. SHELTON: Thank you, Your Honor.

THE COURT: Thank y'all. Take a short break.

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: The Jury has indicated there are few of -- or several of them that are concerned about driving after dark so they do not want to go forward with the next witness but they do want to start at 9 o'clock in the morning. So, we are going to accommodate them and we're gonna start at 9 o'clock in the morning. I'm gonna call them back in but I just wanted to let you know ahead of time.

MR. BELLAMY: That suits me, Your Honor.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: Y'all would need to make sure you get here, you know at least by a quarter of. You can leave your stuff; it'll get locked up, whatever you want to do with it but, you know, if they want to start at 9:00, we'll start at 9:00.

Bring them on in.

MR. SHELTON: Thank you, Judge.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Ladies and gentlemen, taking into consideration, your request, we will stop for today but we will start again tomorrow morning at 9 o'clock. Now, what that means is y'all will need to assemble downstairs in the jury assembly room by at least quarter of. Clerk of Court is gonna have something for you in the jury room, so whoever is there at a quarter of is gonna get to go upstairs and enjoy

it. Stragglers, it'll probably be gone by the time you get there. All right? But it is my intention to start right at 9 o'clock.

Now, I said this just a little bit when I talked to the panel as a whole downstairs. You are not investigators, you are not researchers, you are not to look up anything on the Internet, you are not to -- if you happen to be traveling down that way, you are not go to by the site of this location. The Court will do that if I determine it's necessary or proper to do. But other than that, you will decide this case only on the facts and evidence you hear in the courtroom and from no other source. That means you go home, you see your husband, wife, boyfriend, girlfriend, person down the street and they happen to know you're on a jury, that's great. You can't talk to them about it. They'll give you their opinion about it. They don't have one. Don't want y'all to have an opinion about this case until we're done. If you start forming and expressing an opinion ahead of time before you've heard all the evidence, and then you've heard the law that I will give to you that you have to use to come up with your unanimous decision. It's very difficult for somebody to express an opinion and then go back and, you know, you hear one witness and then you think something and hear the next witness and you think something different. So, wait till you've heard all testimony, you know the law that you have to apply to the

facts and evidence, you'll have all the time you deem necessary and you want to to talk about this before you come to unanimous decision. So, with that, you're excused for the day. Leave your pads and pens in your chair. We'll see you back tomorrow morning, a quarter of, quarter till 9:00 downstairs. All right?

Thank y'all very much.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the Jury.)

THE COURT: All right. Gentlemen, I want to start at 9 o'clock, y'all get here ahead of time. If you have any issues, please alert me and let me know. My clerk will be back tomorrow. They were all getting sworn in today, new lawyers. So, they'll be back tomorrow if you need something. All right?

MR. BELLAMY: Thank you, Your Honor.

MR. MCCUTCHEON: Thank you, Your Honor.

THE COURT: Thank y'all very much.

(RECESS - 4:10 P.M.)

*******OFF THE RECORD*******

(On the Record.)

END OF DAY ONE.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2009-CP-26-11956

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

Condemnor,

vs.

JERICHO STATE CAPITAL CORPORATION OF FLORIDA AND LYNX JERICHO PARTNERS, LLC,

Landowners.

Transcript of Record
(Volume II of III)

November 18, 2014

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Howell V. Bellamy, Jr., Esquire
Robert S. Shelton, Esquire
Attorney for Condemnor

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Attorney for Landowner

Dixie C. Eubank
Circuit Court Reporter

Transcription by:
Kay H. Richardson
Circuit Court Reporter

November 18, 2014

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: All right. The Landowner ready to proceed?

MR. SHELTON: Yes, Your Honor.

THE COURT: And the Department?

MR. MCCUTCHEON: Yes, sir.

THE COURT: Very good. Ask the Jury to come in, please.

Gentlemen, the information form that y'all filled out at the very beginning, I marked that as a Court's Exhibit not to go to the Jury but just for the purposes of this case, I marked it as a Court's Exhibit Number One so that the ---

MR. MCCUTCHEON: Okay, Your Honor. Thank you.

THE COURT: Any problem with that, gentlemen?

MR. SHELTON: No, Your Honor.

MR. MCCUTCHEON: No.

THE COURT: All right. Thank you very much.

COURT'S EXHIBIT NUMBER ONE

MARKED FOR IDENTIFICATION

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Witness from the Landowner, then, please.

MR. SHELTON: Thank you, Your Honor. The Landowner calls Mr. Glenn Chwatt.

THE COURT: All right, sir. Please come around and meet

the clerk right up here to be sworn, please, sir.

GLENN CHWATT, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: Have a seat, please, sir. State your name for the Court, please.

MR. CHWATT: Glenn Mark Chwatt. G-L-E-N-N, last name is spelled C-H, as in Charles, -W-A-T-T.

THE COURT: All right, sir. Now you need to scoot over as close as you can to the microphone and speak up, sir. All right?

MR. CHWATT: Okay.

THE COURT: All right. Go ahead.

DIRECT EXAMINATION OF GLENN MARK CHWATT BY MR. SHELTON:

Q: Thank you, Your Honor. Good morning, Mr. Chwatt.

A: Good morning.

Q: Mr. Chwatt, what do you do for a living?

A: I manage a private equity real estate fund.

Q: And we heard yesterday about Mr. Barbee's children, do you have children?

A: Yes, I've got for children.

Q: What are their ages and names?

A: My daughter Rickey is twenty; I have a daughter Skyler who is twenty-two; I have a son Kyle who is sixteen; and the daughter Dannie who is sixteen.

Q: And you said you manage a fund. How long have you

managed this fund?
A: This particular fund has been in existence since around 2004.
Q: Okay. How much of the fund do you personally own?
A: I own none of the fund.
Q: Who does own this fund?
A: The fund is owned by literally hundreds of individual investors located throughout the United States. They are owned by pension funds, retirement funds, just mom-and-pops, they're investors who invest in this fund.
Q: Okay. And does the fund own the properties that we've been talking about so far this week?
A: Yes.
Q: Were you involved in the process of getting the interest in this property for the fund?
A: Yes.
Q: Okay. What did you do as far as your personal investigation with the Horry County property?
A: Yes, sir. Myself and certain professionals we came down on various occasions to go through the property, went to see the comparable sales, which are the houses that are adjacent to the property. We looked at the tax maps, we went through a bunch of realtors and tried to find comparable sites which were never able to find. One acre sites on the Intracoastal Waterway in Myrtle Beach were in heard of at that time.

Q: Okay. And just briefly, how to the fund come to the fund Tract 11?
A: The fund ended up foreclosing and bid in a $9 million note to buy the property.
Q: Okay. And on December 15, 2009, which is the date the DOT filed this condemnation action was there a mortgage on this property?
A: Yes.
Q: In what amount?
A: We bought it for $9 million subject to an $18,520,000 first senior mortgage.
Q: Okay. I'm gonna ask you to describe, if you would please, the property a little bit and we'll start with a couple of photographs. And Your Honor, these photographs are Landowner's Exhibit Numbers Seventeen through Forty-four, which I offer into evidence and I understand is the property ---

MR. MCCUTCHEON: No objection, Your Honor.

THE COURT: All right, sir. Seventeen through Forty-four are in evidence without objection. You may proceed.

LANDOWNER'S EXHIBIT NUMBERS SEVENTEEN THROUGH FORTY-FOUR ADMITTED INTO EVIDENCE

MR. SHELTON: Thank you, Your Honor.

BY MR. SHELTON:
A: When we first started -- I need glasses.

Q: If you would, take a look at these first five photos and tell me if you would, please, what those depict?
A: Yes. This is the subject property on the Intracoastal Waterway.
THE COURT: Remember now to keep your voice up.
A: I'm sorry.
THE COURT: That's fine.
Q: These are pictures from -- of the actual property?
A: Correct.
Q: And looking at them, what is this in the distance?
A: That's the subject property over there.
Q: And what's in the background?
A: The Intracoastal Waterway?
Q: The Intracoastal Waterway.
A: Yes.
Q: Okay. And are these pretty standard renditions of what the property looked like out at the Intracoastal Waterway?
A: Absolutely, yes.
Q: Okay. Is the property still wooded?
A: Yes, for the most part.
Q: Okay. So, it has not yet been cleared for development?
A: No.
Q: In the before condition, before anybody knew about the Department of Transportation coming on to build a bridge, can you generally describe what the property looked like? If the

Jury were to walk out there before any of this construction began, what would it generally be described as?
A: It's a spectacular piece of property. It's right on the Intracoastal Waterway with clear views up and down the Waterway. I mean, it's just beautiful and hopefully you guys will get to see it.
Q: Did it have any problems with drainage?
A: No, absolutely not. There was no problems with anything. It was ready to be built. The property, again, stood on its own and there were zoned for one house per one acre, so there were gonna be beautiful homes on that site.
Q: And there's -- there's been a lot of talk about another bridge that's a mile or two up Peachtree Road for Highway 544, when you were on this property before the construction began, could you see or hear that bridge at all?
A: No, you couldn't see anything. There was nothing.
Q: If you're on the Intracoastal Waterway in front of this property, could you see or hear that bridge at all?
A: Absolutely not.
Q: Were there any impediments along all of Peachtree Road that would have prevented any developer from putting access points to this property?
A: None that I'm aware of.
Q: Okay. And you could turn left or right anywhere along Peachtree Road?

A: Absolutely, yes.
Q: Okay. Now, that we're aware of -- let me just go ahead and show you some more photos. These are Plaintiff's Twenty-two through Twenty-four. Tell me if you can tell us what these depict.
A: Right. This is looking down Intracoastal Waterway, our property is on the right side.
Q: These are actually from --
A: These are actually from the Intra -- actual, right, yes. Beautiful.
Q: And in each of these photographs, this is Tract 11 on the right-hand side of the photographs?
A: That's correct, yes. Sorry.
Q: Let me show you Landowner's Exhibits Thirty-eight through Forty-four.
A: Yeah.
Q: Tell me if you know what those are?
A: Yeah. These are the neighboring properties just to the north.
Q: Now, we talked just a -- Mr. Barbee yesterday about this cut-out up here in the property.
A: That's correct.
Q: Is that where those homes are?
A: That's where these homes are in that, yes.
Q: Okay.

A: Yeah, that's them.
Q: And that's -- that's what those homes look like out there today still?
A: Yes.
Q: Okay. Describe for me, if you will, please, what the property looks like right now.
A: It looks like a -- the development site where the bridge is there, it's like a war zone. You can't really get close. There are pilings all over, there's machines, they are tearing up all the property building this large bridge.
Q: Okay. And is it the belief of the fund that the bridge will damage this property?
A: Yes, very much so.
Q: In what regard?
A: The concept of this property was always gonna be these beautiful one-acre homes on the Intracoastal Waterway. Now, with this bridge coming through, a high-speed bridge with the noise, the debris, all of the ancillary stuff that comes with a bridge is going to destroy this project and this property. It's cutting the property in half, it's gonna require twice as much money to develop this property and I ---
Q: Hold on. Explain that for me if you would, please. What do you mean it's gonna be more expensive to develop by being cut in half.
A: Okay. When you develop a new property, you go in and you

have what's called general conditions and you set up a staging area. One area and everybody works from that one area. Now, this is basically gonna be two separate developments. So, you're gonna need two staging areas. In the property, when you're building it, you're gonna egress and ingress, so you have one coming in and one coming out, now you're gonna need two of them. You're gonna have ---

Q: Once again, you're gonna need ---

A: I'm sorry.

Q: You're gonna need two on each?

A: Correct, right, egress in and out both sides.

Q: Before you could have come in and out and developed the entire tract of land?

A: That's correct.

Q: Okay. Is there any other additional ---

A: Yes. There's gonna be two separate gate houses and the amenity package, if and when it's available would be a separate clubhouse on each side. So, now you're develop -- you're doubling all your costs if you are to be able to develop this project, which I don't even know if I can at this point.

Q: Okay. Let me show you the remaining pictures and ask you to identify what these are. These are Plaintiff's Twenty-five through Thirty-seven. Looking at Twenty-five first.

A: Yes.

Q: Is this the subject property on the ---
A: Yes, it is.
Q: And this crane that you see in the distance, is that where the construction is taking place?
A: Yes, yes, uh-huh (affirmative response).
THE COURT: You need to answer yes or no.
A: I'm sorry. Yes, yes, this is exactly what the project looks like now.
Q: These are current photos of what the property looks like ---
A: Yes.
Q: --- with the construction project going on from the Waterway?
A: That's correct, yep.
THE COURT: If you would maybe identify it by number which ones those are.
MR. SHELTON: It was Twenty-five through Forty-four.
THE COURT: Okay. Thank you.
BY MR. SHELTON:
Q: Mr. Chwatt, when the DOT first came along with the bridge notification, what did they offer the Fund and its investors as just compensation?
A: Zero.
Q: Zero dollars?
A: Zero dollars.

Q: And what is the DOT offering currently as just compensation?
A: As far as I'm concerned zero at this point.
Q: Well, what was their most recent offer?
A: $400,000 as I recall.
Q: Did you not receive within the past month the 900 ---
A: Oh, the $998,000 that was it.
Q: That was within the past month?
A: Yes.
Q: When did you first learn that DOT was looking into whether this bridge would cause any damage to this tract as a result of noise that it would create?
A: Only after our engineer had delivered a site plan -- a -- he put together a study and after the DOT got the study they determined, okay, well, we better do our own study at this point only after Mr. Powell did ours.
Q: And was that in this calendar year?
A: That was within the last couple of months.
Q: Okay. Now, when you received the condemnation notice, you have an obligation to protect the assets of this fund for the investors, what steps did you take to protect those funds, those investors' deposits?
A: Oh, I immediately got on an airplane, came down here to meet with Mr. Bellamy and Mr. Shelton. At that point we figured out what we had to do to protect this property because

my investors, as I explained to them what was happening, they all got very -- obviously, very upset that this pristine piece of property is being destroyed by this big bridge. So, I came down and then we hired our appraisers, Mr. Jayroe, and our professional, Mr. Powell, to go through this and do a study to see this -- to see what could happen on this property and we delivered that to the South Carolina Department of Transportation.

Q: Now, have Mr. Jayroe and Mr. Powell performed reports?

A: They did -- yes, they did.

Q: And have you reviewed their report?

A: Yes, I did.

Q: And on behalf of your investors are you here today relying upon their reports and their conclusions?

A: Yes, I am.

Q: Okay. If you would, please, answer any questions Mr. McCutcheon might have.

MR. MCCUTCHEON: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF GLENN MARK CHWATT BY MR. MCCUTCHEON:

Q: Good morning, Mr. Chwatt.

A: Good morning.

Q: Did I get it right?

A: You got it right.

Q: I wanted to make sure I didn't get it wrong. All right.

You doing all right this morning?
A: I'm wonderful. Thank you.
Q: All right. Welcome to Horry County. You're from Florida?
A: I'm from Florida, yes.
Q: Yes, sir. And where exactly do you live in Florida?
A: Palm Beach County.
Q: And where is that?
A: South Florida.
Q: Okay. South Florida being -- what's it near?
A: Well, it's Boca Raton.
Q: Boca Raton, okay. And you live there -- how long have you lived that are, sir?
A: Since 1994.
Q: All right. And as I understand, sir, you -- do you have a title with Jericho State Capital?
A: Jericho State Capital? Yes.
Q: Yes. And what is your title?
A: I am President.
Q: You are the President?
A: Yes.
Q: All right. Now, you have other officers?
A: Yes.
Q: And who are the other officers?
A: Richard Chwatt is the only other officer.

Q: That's your brother?
A: That's my father.
Q: Your father?
A: Yes.
Q: Any other partners?
A: No.
Q: Those are the two?
A: Of Jericho State Capital Corp of Florida.
Q: Okay. Tell me -- do you drive income? I think you said you owned some of the property?
A: I do not own any of this, no.
Q: You do not own any?
A: No.
Q: All right. So, how do you get paid, sir?
A: Right now, I do not get paid.
Q: You don't get paid?
A: No.
Q: Have you ever gotten paid?
A: By Jericho State Capital Corp of Florida?
Q: Yes.
A: Yes.
Q: Okay. And on what basis were you paid and how much were you paid?
A: Which I think you are miscategorizing what's happened. The Fund is separate entity to Jericho State Capital of

Florida. The name of the -- Jericho State Capital of Florida is on the title of the property yet the property is owned by All-Weather Opportunity Fund made up of hundreds of limited partners, stakeholders and investors throughout the United States. So, Jericho State Capital Corp or Florida has no financial interest in this whatsoever.

Q: Okay. Who pays you?

A: The Fund pays me.

Q: Which Fund?

A: Jericho All-Weather Opportunity Fund.

Q: All right. But on this title, sir, the property is owned by the Jericho State Capital, right?

A: Subject to its ownership participation agreement with the Jericho All-Weather Opportunity Fund.

Q: All right. Well, then how much does the Fund pay you?

A: Funds not paying me right now, it's in suspension.

Q: Why?

A: Why?

Q: Why is it in suspension?

A: Because it's dealing with the -- putting these assets back in play. For examples, this is one of twelve properties in the Fund.

Q: Okay. Well, what were you paid before it was suspended?

A: I was paid a percentage of the upside gain of the property.

Q: Okay. What did you earn in 2014?

MR. SHELTON: Your Honor, may we approach?

THE COURT: Yes, absolutely. Y'all come over here, please.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of the Jury but out of hearing of the Jury.)

BY MR. MCCUTCHEON:

Q: Have y'all earned any money from this property?

A: No, sir.

Q: But you own -- you've owned some other properties, correct at some point in time?

A: Yes, in the past, yes.

Q: All right. Now, my understanding is, sir, that at some point in time did Jericho State Capital have a mortgage on this property?

A: It had a mortgage, correct.

Q: Okay. And what was the amount of that mortgage?

A: The original amount was $4,633,000, I believe.

Q: 4,000,000? And -- what was the value of that property at that time?

A: According -- at the original closing?

Q: Yes, sir.

A: $39,600,000 was the appraised value.

Q: Okay. And you purchased that property and you had a mortgage on the property?

A: We had a second mortgage on the property, correct.
Q: Who had the first?
A: A group out of California.
Q: And what was the amount of that mortgage?
COURT REPORTER: I'm sorry. Excuse me. I can't hear you, would you please pull down that microphone.
A: Oh, I'm sorry.
Q: What was the amount of that mortgage?
A: $18,520,000.
Q: All right. Now, Mr. Jayroe -- you've hired Mr. Jayroe, correct?
A: That's correct.
Q: And Mr. Jayroe has valued the property on the date of condemnation?
A: That's correct.
Q: That's your understanding?
A: Yes.
Q: And that was in 2009?
A: That's correct.
Q: December 15th, 2009. What was the appraised value of the property on that day?
A: I believe a little over $9,000,000.
Q: 9,000,000?
A: Yes.
Q: All right. Was this property under water as far as

mortgage versus value?
A: I don't know.
Q: You don't know?
A: I don't know.
Q: Well, the mortgage was 18,000,000.
A: Right.
Q: The property was only worth 9,000,000.
A: That's correct.
Q: On the date of condemnation in this case; is that correct?
A: Correct.
Q: And the property is zoned R-1, residential.
A: Yes.
Q: Is that correct?
A: Yes.
Q: And on the -- when did you learn that they were getting ready to put the bridge in?
A: In 2008, I believe.
Q: Okay. And in 2008, had any building permits been issued on this piece of property?
A: None that I'm aware of.
Q: Okay. So, at the time that you had knowledge of this property, there were no building permits?
A: That's correct.
Q: All right. Now, you've also hired Mr. Powell; is that

correct?
A: That's correct.
Q: And Mr. Powell is a civil engineer?
A: Yes.
Q: And is he a noise analysis engineer?
A: I'm not sure of his exact title.
Q: You're not sure of his exact title?
A: That's correct. I believe he is ---
Q: All right. And he has arrived at certain opinions in this case and we'll talk to him later; is that correct?
A: Yes, sir.
Q: Now, in the before, sir, this piece of property had 131.4 acres; is that correct?
A: Yes.
Q: How much of that was wetlands?
A: I believe 16 acres, I'm not sure.
Q: Sixteen approximately?
A: I don't recall exactly.
Q: Wasn't it about 18 acres and some change?
A: Maybe it's eighteen, okay.
Q: And that wetland, sir, went all the way down the front of this property, did it not?
A: Yes.
Q: How far into the property did it go?
A: I'm not sure exactly how far.

Q: Well, you couldn't -- you can't build in the wetlands, can you?
A: You can't build in wetlands, correct.
Q: Okay. And you don't how far it came -- but it went the entire length of the property on the Waterway; is that right?
A: Yes, sir.
Q: Which meant you can't -- but you don't know how far back?
A: Yeah, it didn't go very far back but ---
Q: Didn't go very far back?
A: No.
Q: But it was eighteen-some-odd acres?
A: Running down the entire strip, yes.
Q: On the front; is that right?
A: Yes, sir.
Q: Now, the -- in the before, Mr. Chwatt, this property had, as you have testified, unlimited access on Peachtree Road; is that correct?
A: Yes, sir.
Q: And it was -- excuse me just a moment -- and it was approximately 2,830 feet ---
A: Okay.
Q: --- along the property.
A: All right.
Q: Does that sound about right to you?
A: Sounds about right.

Q: All right. And there was 10.18 acres acquired by the DOT.
A: Condemned by DOT, yes.
Q: It was acquired. When they filed the notice, sir, they own it. So, they acquired it.
A: Yes.
Q: I'll give you your word, they condemned it.
A: That's okay. They took it, yes.
Q: But now, the DOT owns that piece of property today?
A: Yes.
Q: Okay. And what we're in here talking about today is, is how much money the DOT owes Jericho State Capital.
A: That's correct.
Q: All right. Now, in the after, sir, there is an east portion remaining; is that correct?
A: Yes.
Q: And it contains 35.31 acres.
A: Okay, yes.
Q: Is that right?
A: Yes, uh-huh (affirmative response).
Q: And it has 700 feet of frontage along Peachtree Road?
A: Okay. I assume that's correct.
Q: Okay. And then there is a west remnant?
A: Yes.
Q: And it's 85.91 acres; is that correct?

A: Yes, sir.
Q: And how much footage does it have?
A: I don't recall the exact footage.
Q: I think I got my numbers wrong a minute ago. In the before the property had more than 2800 because the west remnant now is 20 acres.
A: I thought it was over 3700.
Q: And I apologize for that. I had my numbers written down wrong. But this west remnant now has 2,830 feet of frontage along Peachtree Road.
A: Yes.
Q: And on both of those, sir, it is unlimited access?
A: When, now?
Q: On Peachtree Road.
A: Yes.
Q: There's nothing that limits access to your two remnants along Peachtree Road?
A: As we sit today?
Q: As we sit here today.
A: Once the bridge is there, it's gonna change everything.
Q: No, sir, that's not what I ask you. I'm talking about outside of the right-of-way of the DOT you've got 700 feet on one side and you've got 2800 feet on the other side. I'm not talking about damages and stuff.
A: No, I'm not talking about damages either. You can get on

-- you can go on to each side of the property, yes.
Q: And it's unlimited?
A: Unlimited, yes.
Q: Limited only by the number of drives that you can put in based upon the DOT's standards?
A: That's correct.
Q: Do you know what they are?
A: No.
Q: Do you know how many you can have in 700 feet?
A: I do not know.
Q: Do you know how many you can have in 2800 feet?
A: I do not know.
Q: All right, sir. And then the Waterway side of the property, you still have frontage on the Waterway; do you not?
A: Yes, I do.
Q: Okay. And as I -- I believe I asked you a minute ago, none of this property had been permitted when we -- when you gained knowledge of the highway coming in?
A: That's correct.
Q: And the, the right-of-way for the Highway Department is going to be 280 feet, correct?
A: I thought it was 275 but okay, yes. It's almost a football field, yes.
Q: And you also talking about generally, sir, about noise.
A: Yes.

Q: And I guess you're saying that there's gonna be a noise problem, an increase in noise; is that what you're saying?
A: Yes.
Q: Do you have any idea, sir, what the American -- I mean the Federal Highway Authority and the State of South Carolina -- wait a minute, let me finish my question -- say about what is ---
THE COURT: Mr. McCutcheon ---
MR. MCCUTCHEON: Yes, sir.
THE COURT: If you have a problem about the witness responding, let the Court deal with that.
MR. MCCUTCHEON: I'm sorry, Your Honor.
THE COURT: You don't do it yourself. Thank you.
MR. MCCUTCHEON: I'm sorry, I didn't ---
THE COURT: That's all right. Continue on.
BY MR. MCCUTCHEON:
Q: You don't have any idea what those regulations say about what is required in order for the DOT to have to do something about the noise and at what time they have to do it?
A: No.
Q: Now, Mr. Shelton asked you, sir, about another bridge in this area; do you recall that?
A: Yes, sir.
Q: And I believe you told him that there's another bridge in this area; is that right?

A: No, that's -- I didn't say that.
Q: Well, is there?
A: Apparently, yes.
Q: There's a 544 bridge?
A: Yes.
Q: Didn't he just ask you about the 544 bridge?
A: He asked me if I could see it and I said no; could I hear it and I said no.
Q: Okay but it is there?
A: I guess it's there; I haven't -- I don't know if it's there.
Q: You've never driven down Peachtree Road to see whether or not there's a Highway 544 bridge?
A: I have gone down Peachtree Road several times. I never took notice of that until recently when -- I had to be made notice that there's that bridge.
Q: You ever drive over the bridge?
A: I've gone over the smaller bridge ---
Q: I'm talking about the 544 bridge.
A: I never whenever that bridge; I went the other way.
Q: You went the other way?
A: Yes, sir.
Q: Now, there was some testimony earlier about having to go down to a certain place and then turn around and come back. If you're coming -- in the before, if you're coming to this

piece of property from the beach, 544, when you get down there you have to turn right by the Bi-Lo, right?

A: Okay, yes.

Q: You have to go around through downtown Socastee, right?

A: Okay, yes.

Q: You have to go across the swing bridge and turn left ---

A: Yes.

Q: --- and then go down the road approximately a mile and a half?

A: That's correct.

Q: And when you go down there, you pass two developments on the left, don't you?

A: Yes.

Q: And they are right beside the 544 bridge?

A: I'm not familiar with those developments.

Q: Sir?

A: I'm not familiar with those developments.

Q: You've never seen them?

A: I am not familiar with those developments.

Q: Are you familiar with the bridge?

A: I am familiar with the bridge that exists. I am not familiar with those developments.

Q: All right. So, you've never seen the three-story high, nice townhouses ---

MR. SHELTON: Your Honor, that's been asked and answered

several times.

A: My answer is no.

THE COURT: Gentlemen, there's been an objection. You be quiet. I'm gonna allow it and -- at this point in time. Objection overruled.

BY MR. MCCUTCHEON:

Q: The question is, you have never noticed on both sides of 544 bridge these nice three-story tall townhouses right beside the bridge that goes over the Waterway with cars going across it?

A: No, no.

Q: Thank you, Mr. Chwatt. I don't have any further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION OF GLENN MARK CHWATT BY MR. SHELTON:

Q: One brief topic, Mr. Chwatt. Mr. McCutcheon spoke with you a moment ago about the various values that have been placed on this property. Has there been a market correction in real estate values over the past few years?

A: Yes.

Q: Okay. As the manager of this investment fund, is that the type of risk ---

MR. MCCUTCHEON: Your Honor, I have an objection to that question and response.

THE COURT: Come over here and talk to me, gentlemen.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

BY MR. SHELTON:

Q: In managing an investment fund for folks who put their retirement into, is that market flexibility a risk that is considered reasonable to take?

A: When we meet with all the investors, we explained to them what the risks are in real estate. Our fund is a -- not a aggressive fund. We do not go in and take highflying risks on deals. We look at the real estate, we see the value, what would happen if we had to take back that property, what would we do with it. We would develop the property and we want to make sure that the dollars we have in are within guidelines. So, we look at real estate risk being the value. Never ever in all the deals we've ever done have we ever looked at something where there is a condemnation or something where there's a loss of a piece of property for zero compensation. Now, it's 998,000 but they started at zero in 2009.

Q: Thank you, Mr. Chwatt. I have nothing further.

MR. MCCUTCHEON: I have no questions, Your Honor.

THE COURT: All right, sir. You may step down. Thank you very much.

All right, sir. Your next witness, please.

MR. SHELTON: May I have just one quick second?

THE COURT: Yes.

You may step down, yes, sir.

MR. SHELTON: Thank you, Your Honor. The Landowner would like to call Mr. Steve Powell to the stand.

THE COURT: All right, sir. If you'd please come around and be sworn.

STEPHEN POWELL, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: State your name for the Court, please.

MR. POWELL: Stephen Suggs Powell.

COURT REPORTER: Spell your first and last, please.

MR. POWELL: First name is S-T-E-P-H-E-N, last name is Powell, P-O-W-E-L-L.

COURT REPORTER: Thank you.

DIRECT EXAMINATION OF STEPHEN POWELL BY MR. SHELTON:

Q: Good morning, Mr. Powell.

A: Good morning.

Q: Could you explain for us, briefly, your educational background?

A: I have a BS in engineering from the United States Military Academy at West Point. I graduated from there in 1979. Served in the Army for roughly five years, four and half years. And after I left the Army I came to the Myrtle Beach area and I've been working in engineering every since. In between the time I left the Army and came to Myrtle Beach, I worked on a Master's degree in business for a while also.

Since that time, I've had a, a good bit of additional, let's say, continuing education including specific training in drainage and some structural training in the number of other things.

Q: Okay. And what do you do for living today?

A: I'm the president of Venture Engineering. We've been in Conway since 1990. We do civil and structural engineering, do some environmental engineering wetlands work, permitting. We do a lot of traditional civil projects for profit developers mostly. We don't really do municipal work. So, people that have tracts of land they want to develop into a subdivisions or commercial parcels that won't develop into shopping centers; we work for clients like that.

Q: Okay. Are you the founder of that company?

A: I am.

Q: Okay. And in your course of work have you ever done what we call site selection work?

A: Much of the work I did in the first five years in business was with, or most of my commercial work, was with a regional shopping center developer and he did shopping centers and a number of commercial sites, big-box and that sort of thing, so he did Food Lion's and Walmarts and Kroger's and Kmart's and whatever else. So we traveled, I traveled an area of five states doing site evaluations looking at specific elements of each site as far as traffic and access and

limiting factors that's, you know, sometimes it's zoning, different things that would either qualify or disqualify a site for consideration based on standards for the particular user whether that's Walmart or Food Lion or whatever.

Q: What about residential subdivisions?

A: We have done -- I hate to use the term hundreds but it probably is hundreds of residential subdivisions. And, of course, in our role there, we evaluate and advise clients on how to proceed with the development so that they do that in a manner which is -- makes residential homes and lots, let's say maximally marketable. So, we look to make sure that, for example, you have to understand wetlands and how you can work around those, or if you have no other choice but to impact them, you know, how you have to go about permitting that. We look at how to buffer the projects that's -- because many of these tracts border existing roads and, of course, the lots that border highways are usually the more difficult ones to sell so we often will construct landscape berms and different things to try to mitigate the effects of either existing noise or aesthetic things. We did a subdivision one time next to a railroad track so we had to figure out a way to buffer that from railroad noise and the aesthetics of the adjacent commercial industrial use.

Q: Specifically as to wetlands, have you been involved in the permitting or mitigating of wetlands and would you tell me

very briefly what that -- what that means?
A: Well, the wetlands on this tract, there's about 22 1/2 acres total.
Q: I mean in your professional history. Have you ---
A: Well, we've done -- yeah, we've done a lot of wetlands permitting and mitigation and there's -- anymore there's two kinds of wetlands, you know, those that are federally jurisdictional, which most of the wetlands on this site are. And then we have -- occasionally, will permit wetlands which are now state wetlands so they're not federally jurisdictional but they still have to be permitted through the State of South Carolina in the coastal zone.
Q: And who are the federal ones permitted through?
A: Through the Army Corps of Engineers.
Q: And you personally have done that you estimate how many times?
A: Forty or fifty times or more.
MR. SHELTON: Your Honor, at this time, the Landowner would offer Mr. Powell as an expert in engineering, wetland delineation and site selection.
THE COURT: Do you wish to voir dire the witness on his qualifications or challenge his qualifications?
MR. MCCUTCHEON: No objection. Tell me again those three areas, Robert.
THE COURT: All right, sir. Could you -- Mr. McCutcheon

asked you to restate the areas, Mr. Shelton.

MR. SHELTON: Civil engineering, wetlands delineation and mitigation and site selection.

MR. MCCUTCHEON: Thank you.

THE COURT: All right. He is declared an expert in those areas. You may continue.

MR. SHELTON: Thank you very much.

BY MR. SHELTON:

Q: Mr. Powell, are you familiar with this particular property?

A: I am.

Q: Can you tell me -- certain at this point because there's been a lot of talk about what we do and do not as far as linear footage on Peachtree Road -- how many feet of frontage does this tract actually have?

A: Before the take, the tract had 3,870 feet, more or less, on Peachtree Road.

Q: Okay. And then how much frontage on the Intracoastal Waterway?

A: The Intracoastal was a good bit less because the Intracoastal frontage has several existing residential lots; so before the take it was about 2,176 linear feet of Intracoastal frontage.

Q: Okay. And we just heard Mr. Chwatt talk about the eighteen or so -- how many acres of wetlands are there?

A: Twenty-two and a half.
Q: Twenty-two and a half total acres of wetlands. How many -- it was described as the area that joins the Intracoastal Waterway; is that correct?
A: Sure. Of course, the entire Intracoastal Waterway is a jurisdictional wetland so everything in the Intracoastal is a water of the US which is the same thing as wetland under federal law.
Q: Okay. And we saw all that there were some homes adjacent to this, did those wetlands once continue up to that property as well?
A: Sure and they probably are still there. The homes that are there, you're allowed to go in and do certain types of vegetation removal that is not considered a violation. So, you can go and cut down the trees, you can grind the stumps but you can't dig the stumps, you can mow the vegetation down and you can plant grass seed and make it part of your yard. And so, that's not a violation.
Q: So all of that stuff you just described, with any of that require any permits from the Corp?
A: It would not.
Q: That's -- you're allowed to just go and do that?
A: Well, you have to be careful, you know, a lot of people get a little carried away when they are doing that work so a lot of times as long as you, you know, have proper guidance,

it can be done without creating a violation.
Q: Okay. So, is it fair to say, and correct me if it's not, that this frontage property could be developed in a way that such that homes on that property would be looking at the Intracoastal Waterway?
A: Every bit of the views there could be opened up completely.
Q: Okay. Tell me about the tract in general in the before, specifically the drainage. Did this property have any problem with drainage in the before condition?
A: No, it really didn't. I mean, there's a big ditch called the Intracoastal right next to it, so really the site was very well drained. There is a, you know, quite literally a man-made ditch that kind of runs, you know, perpendicular to the Intracoastal that drains some of the Peachtree Road frontage and a site to the south, generally, because 544 is -- I guess that would be east of the site. So, it has an existing outfall and that major outfall site is actually within the 10.18 acres of the DOT take. So, the outfall that served, at least the east remainder of this was taken, you know, in the condemnation.
Q: Okay. But in the before condition, this site drained fine?
A: Yes, sir, yeah.
Q: What about the topography of the site in the before; how

would you describe it?
A: Relatively flat, you know, typical for the coastal plain until you get to the Intracoastal and then, of course, it drops off fairly steeply. And there are some hills, you know, closer to the Intracoastal, a little bit of topographic relief there.
Q: Okay. And as far as the access is concerned in the before condition, were there any limitations as to the number of drives you can have on Peachtree Road?
A: Only what's in the -- both the DOT access standards and land development regulations for Horry County and either one of those would have allowed, I won't say unlimited access, but all the access you would need to fully develop the site.
Q: Okay. And as far as the noise that was present before the bridge construction or the bridge itself, was this -- how would you describe this tract relative to the rest of the world, is this a quiet area, noisy area; what is it?
A: I think probably what made that area appealing was it was away from all of the major highways and so it was unusually quiet. Even in the more recent noise analysis that DOT had prepared, they found noise levels that were less than 40 decibels and, you know, by comparison, you know if you go in the library the noise level in there is around 40 decibels and I think they found the noise levels that were 38 decibels. So, that's pretty quiet.

Q: Very well. Taking all of that into consideration and any other considerations that you would normally take into account, would you in the before condition with no worry about the bridge ever coming, have recommended this tract of land to a residential developer?

A: Sure, it would have been ideally suited for the use that Mr. Chwatt discussed, which would be you know the higher end homes, it was already zoned for that use. There is, you know, not a whole lot of projects in the area that really offer that type of lot product, and the ones that do, Plantation Pointe in downtown Myrtle Beach, you know, they're close to downtown Myrtle Beach but they don't have the same benefits as far as serenity and aesthetics, the visual appeal. So, it would have been a very good location for that type of abuse prior to the attack.

Q: Very good. Let's talk about what the property is going to be like when it's completed. Are you familiar with anything that DOT has done in its bridge planning to prevent the water that it collects from the Intracoastal Waterway and channeled down onto this property and coming onto Tract 11?

A: There's nothing shown on the plans about how they're gonna accommodate the water that comes off the bridge. The Highway 31 Road project is roughly 1800 feet in length between the centerline of Peachtree Road and the high point over the Intracoastal Waterway. Pretty much all of that water will be

discharged onto that 10-acre tract that DOT is taking. And just my rough estimates is that the peak runoff in a conductive rainstorm, a typical summer rainstorm, will probably be between thirty-five and forty-five cubic feet per second. You know, that's about a million, 1.2 million gallons in an hour's time. It's a lot of water and there's no way it could be contained on the 10-acre site. It would either run into the Intracoastal and create issues there or runoff onto the adjacent property.

Q: Into the Jericho tract of land?

A: Into the Jericho tract.

Q: Okay. Let's talk about noise for a minute. Did you review the noise analysis that DOT commissioned?

A: I did.

Q: Okay. And are you generally familiar with the noise as well being an engineer, are you not?

A: Yes, and I have testified a number of times in court about noise as well.

Q: Okay. Explain for me if you will your understanding the noise impacts that this bridge will cause to Tract 11.

A: Well, let me talk a little bit about noise impacts as far as what DOT looks at as opposed to what we look at when we talk about residential projects, if I could, please.

Q: We'll get that in just one moment.

A: Okay.

Q: If you would just explain to me how the -- what the noise impact would be and then we'll delineate the difference between federal standards and values.
A: In the environmental impact statement, is probably one of the good ways to look at it ---
Q: Tell the Jury what that is.
A: DOT, before they can begin a project, has to prepare an environmental impact statement which says here's all the impacts it has along the length of the roadway and it talks about impacts to everything from snails to people and has a very specific way of addressing noise in the environmental impact statement. The final environmental impact statement, you know, it indicates different things, elements of noise. And noise of a freeway, and I think everybody would recognize that this is a -- it's going to be a freeway, noise twenty-five feet from the edge of the nearest travel lane will be around 80 decibels and that's in DOT's environmental impact statement.
Q: What is that comparable to for our sake?
A: Well, if you are operating a vacuum cleaner, then you're probably around 70 decibels and that's a noise level that most people are familiar with. Probably the closest thing to 80 decibels that most people recognize would be, you know, a freight train from about fifty feet or a food blender, which surprisingly is pretty noisy.

Q: Okay. And what is that analysis -- that's not an analysis, there's two different types of noise studies we've learned. What is that initial one with the environmental impact statement prepared to determine?

A: Well, the environmental impact statement is prepared to determine if noise levels in the area of noise, I mean it has a lot of other things, wetland impacts and everything else, but in the area of noise the environmental impact statement is determined first -- determine if a noise abatement criteria is exceeded. Under federal standards, where there's federal funding, and South Carolina also has a policy for noise abatement, if there is either an increase of more than 15 decibels or an increase above 67 decibels for residential use then that requires DOT or whoever's building the road to consider noise abatement. Noise abatement would be something like I mentioned earlier that we had done and some residential subdivisions where you put up earth berms to try to reflect or absorb roadway noise to mitigate the impacts. So, in the final environmental impact statement they identified a number of areas that were impacted with noise, including this tract, and where, where it exceeded 15 decibels increase in noise. And just so we understand a ten decibel increase in noise is a doubling of noise. It's a logarithmic value which, you know, if you remember ---

MR. MCCUTCHEON: Your Honor, I want to raise an objection

at this time in regards to anything in regards to noise analysis and that kind of thing. He has not been offered, nor is he qualified as a noise expert and I object to any question along those lines.

THE COURT: All right. Do you want to offer him or ask him some questions about that?

MR. SHELTON: Certainly, Your Honor.

THE COURT: Go ahead and do that.

BY MR. SHELTON:

Q: Mr. Powell, in developing real estate or doing the engineering for developers real estate, commercial and residential, has to be in the parts of your professional duties throughout your career to look at the impacts of noise?

A: It has.

Q: And have you rendered opinions and recommendations to clients throughout your career as to how they noise impacts might or might not affect the property?

A: I have and we do.

Q: And has it been a task for you professionally throughout your career to recommend mitigation where possible?

A: We advise clients on not every project, cause some projects don't have noise impacts, but we advise clients on most projects, you know, based on the location of the project on what the impacts of noise will be to the marketability of lots or to the use of those properties and help them with the

evaluation and design of that.

Q: And you've done this for paying customers throughout your career?

A: Yes.

MR. SHELTON: Your Honor, I would offer Mr. Powell as an engineering noise specialist.

THE COURT: All right. In answer to some previous question, Mr. Powell, you indicated you had so testified in court before?

A: Yes, Your Honor, I've been qualified as an expert in noise on any number of occasions.

THE COURT: Mr. McCutcheon, do you wish to voir dire the witness on his qualifications.

MR. MCCUTCHEON: No, sir.

THE COURT: All right. He is qualified to give his opinions in those areas regarding the noise analysis mitigation that he was offered by the Landowner.

You may proceed.

MR. SHELTON: Thank you, Your Honor.

BY MR. SHELTON:

Q: Mr. Powell, a few moments ago, I believe you were telling us about an increase in 10 decibels being a doubling. I didn't understand what that meant. Would you explain?

A: Ten decibel increase, you know, the math in noise is convoluted at best. So, you know, if you went from 60 to 70

decibels then that's not, you know, something more than a ten percent increase. It's quite literally a doubling of noise level. You know, just to kind of give you some examples of noise, if you're -- if you're in a library, as I mentioned earlier, you're looking at a level of around 40 decibels and, however, if you're listening to a restaurant conversation or you're listening to like an air conditioner unit operating behind your home from hundred feet away you're probably something closer to 60 decibels. Most people, in the backyard, if they have a typical neighborhood your ambient noise levels would be around 50 decibels. So, that kind of gives you an idea if you're standing next to a regular two-lane roadway or your fifty feet from a freeway you're probably close to 70 decibels. So, those are noise levels that most people can identify with. And, if you've been to -- I think the one that most people use is a rock concert is typically going to be around, if you've been to one of those, around 100 to 110 decibels, you know, it's really starting to hurt your ears.

Q: Gotcha. Now, you mentioned a moment ago that the federal criteria that we keep hearing about that there's an increase in 15 or more or it exceeds 67 or 66, that it qualifies to -- for a review or abatement.

A: Well, then if it exceeds the noise abatement criteria, then the DOT must conduct an evaluation which is really to

determine if noise abatement in the particular area is cost effective. And that's a combination of what is the impact of the noise to the reduction of the value of the home compared to the cost of the noise abatement and so you're -- if you have a home that has got a 15 decibel increase -- there are actually federal guidelines on how to calculate how that affects the value of that home.

Q: Okay. Well, hold on just a moment. Without the value portion, the first consideration is whether or not the increase would warrant putting up a wall or a berm, we keep calling that abatement, that's what we're talking about, right?

A: Right, some kind of noise barrier.

Q: So, the federal standard that was done in the environmental -- the federal study, excuse me, that was done for the environmental impact statement, that was under that approach looking to see whether anywhere along this -- not just this bridge but this whole Highway 31 new corridor would increase the noise such that the DOT should consider putting up berms or walls, that's what that noise study was done for?

A: That's correct.

Q: Was that noise study done to determine just compensation ---

A: No.

Q: --- to Jericho?

A: No, no. And, of course, in the environmental impact statement, there were no areas along the entire length of 31 from Highway 9 in the north to Highway 707 at the south that would justify it to be feasible for noise abatement.

Q: You talked a moment ago about the noise analysis, the new study that DOT commissioned this year, you said a moment ago you have reviewed that; is that correct?

A: I did.

Q: Was that analysis done under the same federal considerations?

A: It was, to determine if portions of the site exceeded the noise abatement criteria.

Q: Okay. So, was -- did that analysis come up with any conclusions as to how the value of the Jericho tract would be affected?

A: No.

Q: Okay. Did that analysis recommend just compensation to be paid?

A: It did not.

Q: So, it took into consideration the same federal standards, whether it walls are berms are warranted?

A: Correct. And, of course, you know remember it only looked to see if it exceeded the noise abatement criteria and that study did find that a portion of the site exceeded the noise abatement criteria.

Q: Do you know how much of the site?
A: It indicated, you know, a distance of about 200 feet on each side of the elevated bridge which in his report turned out to be about 19.7 acres.
Q: Okay. Did that study that I'm sure we're gonna learn a lot more about later -- did that study use a computer model to determine the noise throughout the entire property?
A: Yes, it did.
Q: And were the points throughout the property indicated in the report?
A: They were.
Q: Were there any points throughout the property that did not, according to the DOT analysis, have any increase in noise?
A: No, because in the DOT noise expert's report, at 200 feet roughly, it dropped below the 15 decibel or 14 decibel increase and -- but beyond that, it dropped below the 15 decibel. But just beyond that, it was a 14 decibel increase for the next four data points. I think in his report they found ambient conditions of 46 decibels and it increased to 61 decibels in his model. And then, once you went beyond 200 feet, it dropped to 60 decibels for the next four data points in some of the transects I looked that. And, by the time you got to the far ends of the site roughly 2400 feet away, it was down to about 55 decibels.

Q: So, every square inch of this tract received an increase -- well, according to their predictions, received an increase in noise as a result of the sound emanating from this bridge?
A: The Federal Highway Administration has standards that basically, you know, as mentioned earlier, indicated a reduction in value above a threshold noise level and that threshold noise level in the FHWA standards is 55 decibels. So, basically, looking at Federal Highway standards, every square inch of this site has noise levels as a result of the bridge that exceed the Federal Highway Administration threshold standard for noise impacts.
Q: According to the DOT report?
A: And according to the Federal Highway guidelines, yes.
Q: Thank you, sir. Well, tell me this, if a would-be purchaser of a residential tract of land came to you and said I've got a few tracks I want you to look at and this was one of them, when you would look at that tract and determine the effects of this bridge coming across, would you be looking at that impact from the perspective of what the federal standards are and whether a wall meets to be built or would you be advising your client on whether it would be feasible to develop the a estate development within an area where the noise emanates from the bridge?
A: I'd look at it strictly on what I would expect a typical buyer to consider. And typical buyers can look at an elevated

bridge and, you know, there may be one or two buyers out there on the planet that might find that visually appealing, but I don't know that I've ever met any of them. But most of them are gonna understand and expect that it's gonna have a consistent source of noise twenty-four hours a day, that you would never have any quiet in your own backyard. So, it would be difficult for me to represent to a buyer that they could or should undertake a residential subdivision here, knowing that buyers are gonna look to some other location it doesn't have that noise impact.

Q: Okay. You heard Mr. Chwatt tell us a few minutes ago that there is also an impact on this property because now the after with the bridge here it will be more expensive and difficult to develop. Could you please explain what he was getting at?

A: Well, most of us have seen a residential project where, you know, to be competitive in the marketplace, you're gonna want to have an entrance within entrance sign and landscaping and, under Horry County land development regulations, you're not allowed to have lots that access directly off of Peachtree Road. So, you're gonna have to have an entrance road that's going to go back to your first residential street that would serve lots. So, all of that, with different amenities, whatever else means that you can have doubling of your entrance cost, your entrance signage, your entrance

landscaping, your entrance roadway. You have to extend water and sewer back to your first lots 150 to 200 feet. And so all of that means that you would take that infrastructure requirements and those entrance amenities, if you will call them, signage and landscaping, and you'll have to do it twice instead of just once. And, you know, that would add up a substantial number to the cost of development of these now two remnants parcels.

Q: What about the clubhouse or swimming pool, would that be the same problem?

A: Well, it could very well be the same problem but you've got an issue there with a smaller side of this, the east remainder is only 35 acres. You know, I'm not sure that you could justify, you know, doing all the entrance work and doing a pool and clubhouse on that side for the number of lots that you can get on that side. So, you've got that difficulty of deciding whether or not -- you try to justify that and spread that cost out on the number of lots you can get on the small side or you can put a single one on the west remnant, which by the way is 86 acres and require folks on the east side to go out onto Peachtree Road and travel underneath the 31 bridge and go into the west side and make that trek. It just means that if you have a single clubhouse and pool and it's on the west remainder, you can't walk to the swimming pool with your towel. You can't really drive your golf cart to the swimming

pool and stay inside the subdivision; you have to travel out on the State road. So, a lot of things that would be a plus in the community, you just wouldn't be able to do here.

Q: Mr. Powell, I asked you a few minutes ago about if a residential developer came to you looking for a property to develop this would be one that you would recommend. My recollection is that you said it would be in the before condition; is that correct?

A: That's correct.

Q: Okay. Now, if a residential developer came to you today with the knowledge that the bridge is being built there, six lanes, sixty-mile-an-hour, almost-as-wide-as-a-football-field-is-long bridge, would you still recommend this particular tract of land or these two remaining tracts of land to a residential developer.

A: I really don't think I could do that, you know. Could there be some low-end residential use that would be largely incompatible with the waterfront amenity, you're kinda getting that benefit for free so you're having to reduce the value of the land enough so that it can be competitive with some otger use that doesn't have the Intracoastal frontage. That's about the only way you would be able to do a project here so that the value of the home you're buying there is such a good deal that you overlook the noise and the aesthetics.

Q: Please answer any questions Mr. McCutcheon might have for

you, please.

CROSS EXAMINATION OF STEPHEN POWELL BY MR. MCCUTCHEON:

Q: Good morning -- I think it still morning -- good morning, Mr. Powell. How are you?

A: Very good, Mr. McCutcheon.

Q: This piece of property in the after still had waterfront amenities, doesn't it?

A: It does.

Q: And it has them on both sides of the bridge?

A: It does have the Intracoastal views on both the remnant parcels.

Q: And you could build, just like you said on the other side, you can build houses like the ones depicted and the photographs brought in here by the Landowners?

A: You could.

Q: Like one that Larry Paul owns which is right next door, that's Larry Paul's house in one of these pictures or do you know?

A: Yes, sir; it is.

Q: All right. And it's built on this -- with the waterfront on the front -- how many feet of frontage in the after does the property have between the edge of the right-of-way and the property line on the big remnant?

A: On the Intracoastal or on Peachtree?

Q: On the Intracoastal.

A: I believe it has 1875 feet total on the remnant. I'm not sure how much of that is on the remnant but probably not much -- or probably most of it is on the remnant. Let me see. Here you go. It's 1180 feet.
Q: 1100 on the big one or on the small one?
A: On the big side.
Q: On the big side? What was -- what was it in the before?
A: The Intracoastal frontage before the take was 2,176 feet.
Q: And the DOT is acquiring 208 of that, correct?
A: Up on the Intracoastal?
Q: On the Intracoastal.
A: Actually 301.
Q: 301. And that's means how much, 1800?
A: 1875, 1180 is on the west remnant and 695 is on the east remnant.
Q: Okay. And as you said earlier, you can build houses on that?
A: Sure.
Q: Today?
A: Yes, you could.
Q: And ones like this that's all up and down the Waterway now?
A: You could build houses. The issue becomes, you know, if you build a 4 or $500,000 house and are you gonna be able to sell that with the impacts of the noise and the aesthetics

because that buyer is gonna be looking for something that's a little bit different and they don't think it's gonna be appealing to them to have the roadway noise and the ---

Q: You don't know whether it would be are not to you? You're speculating that it would or would not. Some people might. As a matter of fact, there are houses all up and down the Waterway within close proximity to overhead bridges, are there not?

A: As I told Mr. Shelton just a moment ago, I think if the price is low enough to where they couldn't afford not to turn it down but that devaluation that you would have to sell it for to sell that home there is gonna be realized in the value of this land, that's why we're here today.

Q: Are you an appraiser, too, Mr. Powell?

A: No, sir, but I advise developer clients all the time on costs and ---

Q: And you're ---

MR. SHELTON: Your Honor, he said he hasn't finished his answer.

MR. MCCUTCHEON: I'm sorry. I didn't mean to.

THE COURT: He's recognized -- you need to let the witness finish his answer.

BY MR. MCCUTCHEON: BY MR. MCCUTCHEON:

Q: I'm sorry, Mr. Powell. I didn't mean to cut you off; I thought you are finished.

A: Okay.
Q: Go ahead.
A: I advise clients all the time on revenues and expenses associated with real estate development, both commercial and principally residential. So, you know, we get involved in market analysis on a routine basis.
Q: Okay. Now, Mr. Jayroe has been hired in this case to ---
A: He has. I'm not testifying about value.
Q: All right. And he's been hired to do that?
A: Yes, sir.
Q: And the values that he is testifying to is based on the most part on your findings in your report?
A: Yes, sir.
Q: Now, you also, as I understand, are holding yourself out as a noise expert?
A: I have testified about noise a number of times.
Q: I asked you as an -- are you telling us, are you holding yourself out as a noise expert?
A: Yes, sir.
Q: Do you know Josh Wilson?
A: No, sir. I read his report.
Q: Do you know anything about his qualifications?
A: He's got some pretty impressive qualifications.
Q: And he a noise analyst expert?
A: Yes, sir. His focus is strictly on noise. Our focus is

more on the, you know, valuation of noise as it relates to residential and commercial uses. And, so, we advise clients on noise, the sources of noise, you know, and let's say the relative appeal of properties based on those levels of noise. So, yeah, I've done some of the older stamina models for noise and we have the noise model that Mr. Wilson used. Do we do governmental studies for noise analysis? We don't.

Q: And he found 19.2, 19.3, acres of impacted land on this property.

A: That exceeded the noise abatement criteria.

Q: And in this particular case, Mr. Powell, noise abatement under both the South Carolina criteria and the federal criteria would not even be considered, would it, in this situation?

A: I'm not sure I understand the question. Could you ask that again?

Q: Well, doesn't both of those say that in order for a property to be considered for noise abatement under the NAC, which is noise abatement criteria, at the time of public knowledge there has to be permitted properties on the tract?

A: That's correct.

Q: And this one is not?

A: There was not permitted properties on the track, but remember that other properties that were developed along the roadway were also determined not to be feasible for noise

abatement because the cost of the abatement walls or abatement methods, whatever those were, exceeded the lost value for the homes. And, so, the federal or the final environmental impact statement recognized that there were damages to properties along the roadway but those damages were not great enough to justify cost of a very expensive barrier wall.

Q: Are you familiar with the traffic noise impact study procedures, both state and federal?

A: Somewhat, yes sir.

Q: Somewhat?

A: Yes, sir.

Q: Traffic noise -- let me ask you if you agree with this statement, Traffic noise impact study procedures, analysis locations, will check to determine all existing readily apparent land-use activities. Development and undeveloped, for which development is planned and programmed. Proposed development will be considered planned, designed and programmed on the date of issuance of building permit. Is that correct?

A: That's correct; yes, sir.

Q: Then there were none on this?

A: That's also correct. There was not ---

Q: Which means that the DOT under the federal standards and the state standards has no responsibility down the line to abate noise under these criteria?

A: And we don't disagree with that whatsoever. Just remember that we're talking about two different things. You are discussing whether or not there was a requirement under federal standards to abate noise on a property that was not yet developed. We agree that -- I agree that that was not a requirement here but the federal standard also recognizes that there are impacts and Mr. Wilson's report recognizes there were impacts. There were increases of noise above the federal Highway administration threshold standard of 55 decibels across the entire tract and the Federal Highway regulations have all recognized for many, many years that there are value impacts based on increases in noise from roadway projects. And, you know, so my testimony is not about whether or not we should have asked for a noise abatement. You know, I agree wholeheartedly and completely with Mr. Wilson's report. You know, a small fraction of this site, roughly 19, 20 acres exceeds the noise abatement criteria but it doesn't qualify for noise abatement because it does not have a building permit prior to the date of the take. However, the entire site is impacted by noise.

Q: According to you?

A: No, sir, according to the federal standards. I'm just ---

Q: What about Mr. Josh Wilson?

A: His report did not talk about impacts except for as

regards to noise abatement. So, he looked at those noise levels and he basically said the site has this level of noise but it does not qualify for noise abatement principally because of what you just said, there was not a building permit issued before.

Q: How many sites -- there were 358 sites established by Mr. Josh Wilson, correct?

A: The 358 points on his grid for noise analysis or something like that.

Q: Do you have any questions about the way he did this noise analysis ---

A: No, sir.

Q: --- Mr. Powell?

A: No, he used the -- the older models were not three-dimensional, he did use the three-dimensional noise model. I thought it was very good work.

Q: And on three -- you're saying that on all 358 of these points, they exceeded the decibel level on every one of them?

A: The threshold level under the Federal Highway Administration for noise impacts related to value, yes.

Q: Every one of them?

A: Yes, sir, I've got the copy of the report; you want me to show you?

Q: No, that's okay. I just want to make sure we're on the same page.

A: You know, close to the overpass he was showing readings in his noise model projections, estimates, you know, and remember these are calculations and -- but showing levels of 61 decibels. You know, I'm not sure about certain things. I haven't used the new noise model and so I would have to defer to Mr. Wilson but I'm not sure how it can necessarily shield that much noise when we know that at the edge of the roadway, you know, sixty feet, seventy feet up in the air that the noise level is gonna be 80 decibels and a big chunk of that noise is generated from large trucks that have diesel exhaust that's up above the, the level of the parapet walls along the bridge. But still, you know, I would stipulate that his noise model is completely accurate and he starts at 61 decibels in the area closest to the road and it tapers out at the furthest reach of the Western remainder, which is 2465 feet wide at 55 decibels.

Q: And would you agree with me, sir, that none, you've already said that none of his levels exceed the criteria that requires noise abatement criteria assessment?

A: Yes, sir, that's true. And so what that ---

Q: What's that ---

THE COURT: All right. Mr. McCutcheon, let him finish answering his question.

A: What that means to Jericho State Capital is that there will be no abatement which means that they're gonna have to

suffer the effects of noise across the entire tract. And that means that anyone that builds a house here in the future is gonna have to suffer the effects of noise in their backyard and noise, you know, in their bedroom because, you know, the levels of noise here are gonna be such that, you know, you would hear in your kitchen, in your bedroom, in your living room, all hours of every day. You know, noise is unwanted sound; that's the definition of noise. And it would be no different than if you had a house in the country and somebody came next door and they decided they are going to open up a sawmill and so they built a sawmill next to you and so before you had a nice quiet place in the country where it was 35 decibels and then somebody came and was an allowed use on the property next to you and there's nothing you can do about it and they open up a sawmill and it's running at 90 decibels all the time, 100 decibels all the time. So, and then you want to sell your home because it's driving you crazy but you can't sell your home because, guess what, it's gonna impact the value of your home. So, we have that condition here and we know it's gonna exist and we're just trying to figure out how to deal with that in the courtroom today.

Q: Now, how many levels above 61 did Josh Wilson find anywhere on this piece of property?

A: I think that was the highest reading he got was 61 in his noise model

Q: So where do you get your numbers 70 to 80?
A: Well, at the edge of the traveled roadway in the environmental impact statement indicates a level of 80 decibels. That's not my data that's DOT's data. And, so, you know, how does it go from 80 decibels at the edge of the road to 61 decibels on the ground sixty feet away, I don't know.
Q: Well, what is it in the receptors that he used and the modeling, which you said is all correct.
A: Uh-huh (affirmative response).
Q: Are you saying that at sixty-one number is incorrect?
A: tab No, sir. No, I'm not saying it's incorrect; I'm saying I'm not sure what, you know, I -- I presume in the modeling effort that it's modeled so that the bridge itself reflects the noise upward and away from the property and shields effectively the noise, you know. Having sat up underneath other similar bridges and you have to sometimes scream to talk to the guy next to you in the busy traffic period, you know, I'm not sure that the computer model completely accurately reflects that transition of noise through the bridge itself. You get vibrations and, in my experience, most of those vibrations from traffic going across the bridge is gonna be more low-frequency noise which has the tendency to penetrate the walls of your home more than the higher frequency noise. And the model predicts an equivalent, one hour equivalent noise, so it could actually take that total sound energy and

averaged out to 61 decibels but you may still may have higher -- lower frequency noise is gonna constantly penetrate the walls of any home in this property. So, 61 decibels could be quite accurate but it may not represent the frequencies that are gonna be most offensive.

Q: Mr. Powell, what I'm trying to figure out here is do you -- did Mr. Wilson do something wrong in coming up with his numbers as to what the noise will be in the year 2030?

A: I think what he did was consistent with the Federal Highway standards. Do I think -- you know, I would have questions? Yeah, I've had questions but I'm not gonna go so far as to say Mr. Wilson's data is wrong. I think it probably is a fair representation of the noise based on the work that he did.

Q: And in that regards, sir, if it is correct, then his numbers are right and yours are not.

A: No, my numbers basically said you're gonna have 80 decibels at the edge of the road and that's correct, that's in the DOT's environmental impact statement. Unless you're saying their environmental impact statement is wrong, then my numbers are correct. And so it's not that we are contradicting each other in this regard, just that one federal document or one DOT document says at the edge of the roadway you're gonna have 80 decibels and then Mr. Wilson's report says, you know, if you jumped off the bridge and landed down

below and didn't hurt yourself too badly your only gonna hear 60 decibels. And so is it possible that all of that noise is reflected by the concrete of the bridge, I suppose it's possible. That's certainly the way his model was put together.

Q: Are you familiar with the term shadow zone?

A: Yes, sir.

Q: What exactly is a shadow zone?

A: It's the area below the bridge where the noise is reflected.

Q: Would you agree with me that -- do you know what a shadow zone effect is?

A: Yes, sir.

Q: What is that?

A: Well, that's the effect of the area below the bridge where the noise is reflected.

Q: Would you agree with this statement, Due to the elevation of the bridge in relationship to the property, the majority of the traffic noise promulgates over the property and disperses as it typically would attend normal atmospheric conditions?

A: I'm not sure I would have worded it that way. You know, noise does not attenuate when it travels through the air very well. You know, if you had a roadway at grade and most of the noise is generated by wheels on pavement, and this is pretty much in the final environmental impact statement and in any

paperwork you get on noise. So, the tires on the pavement are the chief noise generated. Now, if you have a big diesel truck and it's climbing that bridge, it's gonna make more noise and -- but the shadow zone effect is the area where the noise, you know, hits the concrete pavement or the barrier wall and it reflects up and away the subdivision. So, I think that probably is something that we would experience here. But, what you don't know, is how much is gonna be noise transmitted through the infrastructure of the bridge itself and that would be more low-frequency noise and that low-frequency noise sometimes is the more offensive elements of noise.

Q: Now, in the after, they still have 700 approximately feet on one remainder and 2800 on the other?

A: 24.

Q: 2400?

A: Yes, sir, 2465.

Q: And that's frontage along Peachtree Road?

A: Yes, sir. 1100 on the east side and 2465 ---

Q: So, it's 1100 on the east side?

A: Yes, sir.

Q: And 2400 on the west of it?

A: 1107.75 feet.

Q: Other than the requirements of the DOT as to how many drives you can have, there is no other problem with having

drives along both of those pieces?
A: No, sir.
Q: And do you have any idea what -- what is it every 200 feet?
A: Land Development regulations would require you to have one entrance road for up to fifty homes and once you get past fifty homes, you'd have to have two entrance roads. So, on the 35 acres, you know, as it's currently zoned you probably wouldn't put more than fifty homes. You know, if you decided to do something different on the property and get higher density, then you would probably have to look at that but still in 1100 feet you would be allowed two driveways. So, I don't think it would be a problem no matter which way you went with the property.
Q: On either side?
A: On either side.
Q: Okay. The thing, sir, about the infrastructure costs, you talk about -- I think you indicated that you would -- you'd have to double the infrastructure costs?
A: It wouldn't be double except for getting, you know, water and sewer and roads and drainage into the property. You know, you're gonna have to do two different entrances and two different signs. And, you know, sometimes you can spend 35, 50, $75,000 just on landscaping and an entry sign to have enough impact where people go by and they go, wow, and they

want to go into a neighborhood to look at it. And so, for most residential neighborhoods, that entrance sign, that wall, that landscaping, that's their -- it's kind of like the used car lots where they have all those flags up front and they get your attention, well that's what you have in residential subdivisions. You'd have to do two of those. So, you could spend a lot of extra money having to do that twice because of the severance of the site into two tracts.

Q: You wouldn't have to have two clubhouses, would you, sir?

A: I think it would be difficult to probably justify two clubhouses but then you've got the negative impact of whichever site has the clubhouse, the other site has a negative and there's some kind of effect on appeal which has an effect on value because if you live on the site that doesn't have the clubhouse then you can't really, you know, walk with your kids or take your golf cart easily to go to the pool for some July afternoon.

Q: You can go under the bridge, can't you?

A: I think Mr. Barbee testified that on the date of the take that would not have been allowed. It's controlled access. They're gonna have a fence up there.

Q: Okay. Is there such a thing as applying for a permit to be allowed to go under the bridge?

MR. BELLAMY: Your Honor, the objection is as of the date of take this was a controlled access highway.

THE COURT: Sustained.

BY MR. MCCUTCHEON:

Q: Now, are you familiar -- I assume you're familiar with the 544 bridge?

A: Yes, sir.

Q: And that is a bridge similar to this one other than the fact that that one has four lanes and this one has six?

A: I think that's correct.

Q: And the elevations are pretty much the same?

MR. SHELTON: Your Honor, may we ---

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

BY MR. MCCUTCHEON:

Q: Now, the 544 bridge, you're familiar with that?

A: Yes, sir.

Q: And it goes from 544 -- it starts at 501 and it goes on down to Socastee; is that right?

A: Yes, sir.

Q: And there is a bridge there, does it not, that goes over the Waterway?

A: 544 bridge.

Q: 544 bridge. And as a matter of fact, it starts to elevate before you get to Peachtree Road?

A: That's correct.

Q: This bridge is approximately 1.5 miles from this one?
A: That's correct.
Q: And it goes up and over just like this one does.
A: Yes, sir.
Q: And you've talked about how much of a detriment it's going to be for developments and so forth; do you recall that?
A: Yes, sir.
Q: Can you tell this Jury what is on each side of the 544 bridge almost up under it?
A: There's residential houses and there's one on the -- it's the 544 bridge is going east and on the -- let's call it south -- on the west side, you know, on the Conway side of the Intracoastal, there's residential houses and a marina area.
Q: Now, are there not several -- aren't there two -- I call them -- I don't know if they're subdivisions are not but there are developments that have a number of houses in them on both sides of Highway 544?
A: Yes, sir. And I think in Mr. Jayroe's testimony he is gonna talk about, you know, the apparent sales of those and how those are affected by ---
Q: Okay. Well, we'll ---
THE COURT: Again, Mr. McCutcheon ---
MR. MCCUTCHEON: I'm sorry, Your Honor.
THE COURT: --- he was answering the question that you asked, you allow him to answer.

MR. MCCUTCHEON: I'm sorry, Your Honor.

A: And, I don't think there's any question that people will build houses near bridges. I don't think there's any question that eventually someone will probably build houses on this property. The question is, is how much is it going to impact the value of those houses and that loss of value in the homes is gonna be accrued to the value of the land here that we're testifying about today.

Q: But you would agree with me, sir, that there are three-story nice townhouses on both sides of that bridge?

A: Yes, sir.

Q: Do you recognize these photographs?

A: Yes, sir.

Q: What are they?

A: That's some of the communities adjacent to the 544 bridge.

MR. MCCUTCHEON: Your Honor, we'd introduce these into evidence.

THE COURT: Objection?

MR. SHELTON: Same objection we just brought to sidebar, Your Honor.

THE COURT: Sustained.

BY MR. MCCUTCHEON:

Q: Mr. Powell, have you reviewed the hydrology studies in this case?

A: No, sir, I have not. I was not able to get a copy of the DOT drainage plans for the bridge.
Q: So, you haven't reviewed them?
A: No, sir.
Q: So, you don't know what the DOT is doing with the water that's coming off the bridge?
A: I heard Mr. Barbee's testimony and what he testified, if I recall properly, was they were gonna drop it onto the ground below the bridge.
Q: Did you ask to see the hydrology study?
A: Yes, sir. We always try to get a copy of all of the plans. In this case, it just never came together on the drainage plans.
Q: And you're saying they were not available to you?
A: I'm saying I didn't get them.
Q: I asked you -- they were available to you, though, weren't they?
A: I suspect if we had pushed it but my understanding is that what we -- what my understanding of the drainage is that there was no, you know, formal conveyance that was shown on the plans to intercept the water and take it somewhere, you know, that was to keep it from getting onto the adjacent properties.
Q: But you didn't review the hydrologies?
A: No, sir.

Q: Thank you. I don't have any further questions.

THE COURT: Any redirect?

MR. SHELTON: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION OF STEPHEN POWELL BY MR. SHELTON:

Q: Mr. Powell, when Mr. Wilson took his noise meters out to this property, isn't it true that he placed them about 100 feet outside of the bridge right-of-way?

A: Yes, sir.

Q: Can that account for the difference between the environmental impact statements 80 decibel number at the road versus Mr. Wilson's 61 decibel number?

A: Well, it -- a couple of things is the 80 decibel number would probably be a design year, you know, based on peek traffic in another fifteen years or something. I think the design year for the project in the environmental impact statement was the year 2030. And so -- and, of course, there's not a road right there right now. So, he was still measuring ambient preconstruction conditions. And I don't understand why he got a number that, that was so different from the original environmental impact statement. But a lot of that could just be time of the year, you know, the wind. The original environmental impact statement showed noise levels of 38 or so and I think his were 46, a little bit of difference but, of course, those are different measurement locations and were not measured at the same area.

BY THE COURT

Q: But there isn't any doubt that Mr. Wilson found roughly 19 acres of the land had if it had been permitted land, met the test to be called impacted under the federal standards?
A: No, there's no question about that but that's the calculated design year impact.
Q: I understand. And there's no question that Mr. Wilson found that everywhere on this entire tract of land, the noise will increase as a result of this bridge?
A: Typically, a minimum of 9 or 10 decibel increase across the entire tract or more. So, about the lowest value I saw in his data was 9 decibels over his ambient conditions, which again as I testified fundamentally a doubling of noise and in the higher levels within 200 feet of the overpass of the bridge and the design year were 15 decibels, which -- you know, so it was between 10 and 15 decibels across the site.
Q: Thank you, Mr. Powell. I have nothing further.

THE COURT: Anything on those questions, Mr. McCutcheon?

MR. MCCUTCHEON: No, sir.

BY THE COURT

THE COURT: All right. Very good. All right. You may step down, sir.

All right. Ladies and gentlemen, we're gonna take a short break if you want to go to your jury room, just leave your pads and pens in your seat and we'll call you back out in just a few minutes. All right. Thank you.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the Jury.)

THE COURT: On those photos that you wanted to introduce, Mr. McCutcheon, regarding the 544 houses, I sustained the objection finding that the photographs were not relevant at this point in time to the issue at hand. If you want to revisit it later with -- through some proper person that would set that the comparison between the two bridges and the real estate areas are comparable then I'll allow you to revisit it but there was not a proper foundation laid and I found it was not relevant at the time.

Thank you very much. Take a short break.

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Ready to proceed?

MR. BELLAMY: Yes, Your Honor.

THE COURT: And Mr. McCutcheon?

MR. MCCUTCHEON: Your Honor, before we do that, for planning purposes ---

THE COURT: Yes, sir.

MR. MCCUTCHEON: I have a particular order that I need to call my witnesses in.

THE COURT: Okay.

MR. MCCUTCHEON: One of them doesn't hit the ground in Myrtle Beach until noon and that's the one I need to call before I call my appraiser.

THE COURT: Okay.

MR. MCCUTCHEON: And I would ask for a little lenience from the Court ---

THE COURT: Well, I mean, I assume y'all have another witness.

MR. MCCUTCHEON: They do.

THE COURT: All right. And so that's why we're gonna take -- if Mr. Powell is any representation, that's probably gonna take the rest of the morning for the next one. So, I don't think you're gonna have a problem. It doesn't look like it.

MR. MCCUTCHEON: All right. Thank you.

THE COURT: All right. Ask the Jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Mr. Bellamy, Mr. Shelton, your next witness, please.

MR. BELLAMY: Thank you, Your Honor. We'd call Mr. James Jayroe.

THE COURT: Just come and meet the Clerk right over here, please.

JAMES R. JAYROE, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: Have a seat, please, sir. State your name for the Court, please, sir.

MR. JAYROE: James R. Jayroe, Jr.

DIRECT EXAMINATION OF JAMES R. JAYROE, JR. BY MR. BELLAMY:

Q: Good morning, Mr. Jayroe.

A: Good morning.

Q: For the record, give us your full name, please, sir.

A: James Ralph Jayroe, Jr.

Q: All right, sir. And where do reside?

A: I reside in Myrtle Beach.

Q: All right, sir. And have you always resided in Myrtle Beach?

A: No, sir. I'm originally from Mullins, South Carolina, about fifty miles inland. And other than college and the service, I've been in this area and in Myrtle Beach practicing real estate since the late sixties.

Q: 1960?

A: Yes, sir.

Q: All right, sir. Did you serve in the military?

A: Yes, sir.

Q: What branch did you serve in?

A: United States Marine Corp.

Q: How long were you in the Marines?

A: June '66 to November '70.

Q: All right, sir. Honorably discharged?

A: Yes, I was.
Q: And after you came out of the Marine Corp what did you do?
A: I came down here and was in real estate and insurance and some nighttime bartending.
Q: All right. And when did you get into the real estate appraisal business and/or real estate sales? Are you a licensed real estate broker?
A: Yes, sir.
Q: All right. Presently licensed?
A: Yes, sir.
Q: And when did you get into the real estate appraisal business?
A: Prior to the recent laws, as long as you are a real estate broker at that time in the 70s, you could appraise property just a real estate broker in the State of South Carolina. And mostly, the appraisals we did at that time were for estates, somebody needing to know the value to record it at the courthouse when somebody passed away. So ---
Q: Are you presently licensed as a real estate appraiser?
A: Yes, sir. I'm a State Certified General Real Estate Appraiser.
Q: When were you licensed?
A: When they first put the licensing in and I'm not sure whether that's early in the 90s or -- I can't remember when

that was but they put it in nationally.
Q: And you are still licensed as we speak today?
A: Yes, sir. Licensed Certified.
Q: Now, tell me some of the work, classes of work that you do as a real estate appraiser. Do you do commercial work as well as residential work?
A: Mostly commercial work now.
Q: All right, sir. And what does that entail?
A: It -- everything. We do hotels, motels, shopping centers, strip centers, the beachwear shops; anything that is a business type valuation.
Q: All right, sir. And do you do residential appraisal sales such as this property which is the subject of this condemnation?
A: I don't really do any sales, per se. I'm not in the selling business. I just keep my broker's license in case I get lucky or something.
Q: But valuing residential property, you do that?
A: Yes, sir. Mostly in subdivisions we do the subdivision, appraise the whole thing.
Q: Have you done appraisal work for both Landowners and the Department of Transportation?
A: Yes, sir, I have.
Q: All right, sir. In other words, you've represented both through the course of your experience?

A: Yes, sir, I have.
Q: All right, sir. And you presently reside in Myrtle Beach, South Carolina?
A: Yes, sir.
Q: All right. Do you consider yourself qualified to evaluate from a rating standpoint the property in the Horry County area?
A: Oh, yes, sir.
Q: All right, sir. In this particular case, were you employed by Mr. Chwatt to do an appraisal of the tract of land as it was situated in the before as well as in the condition in the after?
A: Yes, sir.
Q: All right, sir. Is that similar to what you would do when you would do an appraisal for the South Carolina Department of Transportation?
A: Yes, sir, exactly, just use a different form.
Q: All right, sir. (TO THE COURT) Your Honor, we would offer Mr. Jayroe as an appraiser of real estate, both commercial and residential property.
THE COURT: Do you wish to voir dire the witness or challenge his qualifications?
MR. MCCUTCHEON: No, sir, no objection, Your Honor.
THE COURT: All right, sir. He is so qualified to give his opinion. You may proceed.

BY MR. BELLAMY:

Q: Mr. Jayroe, when you were employed by Mr. Chwatt, with help from our firm, did you undertake to appraise this property?

A: Yes, sir, I did.

Q: All right, sir. Now, for the Jury and for those who are not familiar with the process, you begin with a tract of land and describe some of the features of the tract of land as it sat there in the before, which of course is on the December 15, '09.

A: Yes, sir. We -- when we have an appraisal, we do research on the subject property, find out what it is, it has how -- you know, approximately 3800 feet of frontage on Peachtree Road and about the same amount on the Intracoastal Waterway and so we started looking at similar tracts that have sold to find out the value.

Q: How many acres did this tract of land have in the before?

A: I believe 131.4.

Q: All right, sir. And from a -- and having frontage on the Waterway had what effect on this tract of land?

A: It made a premium piece of property for development.

Q: As far as the topography, the aesthetics of this piece of property, was it suitable in your opinion for the development as an R-1, single-family, residential tract?

A: Yes, sir, it was.

Q: All right, sir. Did it have water and sewer and all the utilities available to the property?
A: Yeah, they were available to the site.
Q: All right, sir. And so, when you began with that process -- and obviously let's talk a little bit about what had happened from, say 2006 up till 2009, what had happened to the economy both in the nation and in generally as in Horry County and Myrtle Beach?
A: Basically, the bottom fell out. Properties were sold for half of what they were purchased for or even down to twenty-five percent or more. In other words, some properties became not feasible to develop, you know, they were so negatively impacted that nobody developed them. In other words, the developer ran out of money, I guess, is the best thing.
Q: And when you started this process, were you or were you not aware of the effect of what the economy had had on all properties?
A: Yes, sir. We have to deal with that daily.
Q: And in your evaluation of what we call the before value as of December 9 -- '09, December 15, '09, did you take that into consideration into your evaluation?
A: Yes, sir.
Q: All right, sir. So, the numbers that you would come up with as we would go through this process, reflect the downturn of that market condition?

A: Yes, sir, it did.
Q: All right, now. First of all, when you undertake to appraise a tract of land and this was a tract of land, do the characteristics of the land add to the aesthetic value of the land?
A: Yes, sir. Everything from highlands to wetlands, view, access, everything counts toward a piece of property.
Q: All right. Did you consider as you began this process that this tract of land was very desireable tract of land?
A: Yes, sir. It was quite desireable.
Q: Because of the size, did that add to its potential for development as a residential tract?
A: Yes, sir. With more area, you had more unique things you could put on it. You could put a variety of different properties but I believe this was to be larger homes and more expensive homes.
Q: All right, sir. Now, do you understand the significance of the date of December 15, '09?
A: Yes, sir.
Q: What, for the benefit of the Jury, does that mean?
A: The date of the take was December 15th, 2009. You have to -- as of that same day, you have to appraise it as it is, as it sits and on the same day you have to come up with a value of what damages or benefits were caused by the highway project and there are no benefits. Nobody has said that there

were any benefits to this.
Q: Both you and the Department of Transportation agree that there are no benefits?
A: Yes, sir.
Q: All right, sir. Now, then what -- do you start then looking -- the zoning on this tract was R-1. I think Horry County changed the name to SF 40, which is basically the same?
A: Yes, sir. It's just a slight difference in the size of the lots.
Q: All right, sir. So, what do you do? Do you go out and start trying to find a neighborhood analysis and why is that important?
A: Well, we go out and try to find land sales that have the same characteristics that the subject does.
Q: And that's what you -- you were looking for comparable sales?
A: Yes, sir.
Q: All right. Is it possible to go out and find an indentical land sale just exactly identical to the tract you're appraising?
A: No, sir. It's an imperfect world. So, you never have two sites that are exactly the same. One might be a corner lot, one might be an interior lot and then you look at paired sales or match pairs to decide the difference.
Q: When you went to look, obviously, this property fronted

on the Intracoastal Waterway for 3400 feet or whatever it was. What value does the proximity or the fact that the Waterway is on one of the property sides add to this tract of land?

A: That's one of the prime locations to be is on the Waterway or the -- 100 percent would be on the oceanfront. So, this is probably the second best location on the Intracoastal Waterway.

Q: From 2006 up through 2009, were these very -- Waterway lots very attractive and very sought after?

A: Yes, sir. They were -- people buying the large tracts of land would have these, at that time, everything was going good. And people at that time would buy a tract of land, survey it, have it cut up and have a big auction. And several of those sales, they sold every lot in the whole subdivision, I mean, here in Myrtle Beach and down in Georgetown. So, that's -- that shows there's -- was demand or demand that people wanted to be on the Waterway.

Q: All right, sir. And the fact that there was about 3800 feet of frontage on the Waterway added to the value of this tract?

A: Yes, sir. Yes, sir.

Q: All right. How about the fact that it was bounded by Peachtree Road on the -- would we say the west side? Was it the heavily -- highly traveled road?

A: No, it's not. No, it's not. It's a ---

Q: Did it lend itself to a residential type community development?
A: Yes, sir. That's the residential area and the rural area.
Q: All right, sir. There's not 35,000 cars a day coming by there?
A: No, sir.
Q: All right, sir. Now, the property has wetlands on it, did it not?
A: Yes, sir. I think seventeen or 20 acres or something along that. It's typical of Waterway frontage lots.
Q: And you took that into consideration in your appraisal in the before.
A: Yes, sir; I did.
Q: Now, when you started to look at comparable sales, where did you go -- let me ask you this, there are several methods or methodologies you can use in appraising -- and, obviously, this is raw land, is it not?
A: Yes, sir.
Q: There are several methodologies that are available to us for an appraisal -- for an appraiser when he does it such as the cost approach, the income approach or the sales comparison approach. Was the cost approach applicable to this piece of property?
A: No, sir.

Q: And why was that?
A: Well, it was vacant land and, you know, we can't produce land at any cost.
Q: How about the income approach?
A: No income to the lands and those tracts are not typically leased.
Q: And how about the sales comparison approach?
A: Well, the sales comparison approach is the only approach.
Q: And explain to the Jury, what do we mean by that approach?
A: You take sales of similar properties and compare them to the subject. You have to make adjustments for location, the size, number of wetlands. You have to do all that to try to adjust down to the subject. You do not address the subject, you adjust the comparable and that gives you an indication of what the subject should be.
Q: And be very candid, this is based on your opinion and your experience as an appraiser?
A: Oh, yes, sir.
Q: All right, sir. And I assume that the DOT uses a similar process?
A: Yes, sir.
Q: Now, what was the first sale that you undertook to examine? Tell the Jury a little bit about your first comparable sale and why you selected it and then we'll go

through the adjustments on all of them in just a minute. What was the first sale you used?

A: The first sale was on the north side of Enterprise Road at the terminus of Bay Road in Socastee.

Q: All right, sir.

A: And that one sold for $4,200,000 for 52.84 acres and they were going to develop single-family homes and town homes on that. And that averaged, the sales price reflected $79,489 per acre.

Q: And when was that sale?

A: That sale was January 5th, 2005.

Q: All right. That was your first sale?

A: Yes, sir.

Q: And your next sale, Sale 2, where would it be and why did you select it?

A: Sale 2 is located at North Myrtle Beach, across the Waterway, on the new bridge that they just built, the Main Street connector and so those were quite comparable to this property. So, that's why we used this sale.

Q: Why was that sale, in your opinion comparable to this property?

A: It had Waterway frontage, there was a bridge being built to get to downtown North Myrtle Beach. And, so, it was a similar piece of property. It was rectangular -- almost rectangular in shape similar to the subject, Waterway frontage

and it was very similar to the subject.
Q: All right, sir. And what -- when did that sale occur?
A: It happened in August of 2005 and that sale reflected $202,621 per acre.
Q: What was the total sales price on that tract?
A: Total sales price was $11,286,000.
Q: And for how many acres?
A: That was for 55.70 acres.
Q: So, this tract was somewhat smaller than the subject tract?
A: Yes, sir
Q: All right, sir. You would make adjustments in your adjustments later ---
A: Yes, sir.
Q: --- for the difference in the size?
A: Yes, sir. There was a size difference.
Q: In the parlance of real estate appraisals, is it sometimes that smaller tracts sell for more than larger tracts, acreage wise?
A: It's based on a per acre value and the smaller tracts typically sell for a higher value per acre than the larger tracts.
Q: All right, sir. And then you have a third sale which is in the Myrtle Beach area. Tell the Jury about that.
A: That's at the western terminus of Joe White Avenue and

it's on the Intracoastal Waterway in Myrtle Beach. And Joe White Avenue used to be 10th Avenue, I believe.

Q: All right, sir. That's right kind of in downtown Myrtle Beach?

A: Yes, sir. It's downtown Myrtle Beach.

Q: All right. And how much was that sale for?

A: That sale was $27,611,506.

Q: Okay. And when did it occur?

A: That one occurred in January of 2007.

Q: And what does that average out for the price per acre for that sale?

A: The price for acre was $260,683 per acre.

Q: All right, sir. Then you go to your fourth sale. And where was it located and why did you chose it?

A: It was located in North Myrtle Beach and it was off Sandridge Road. And it sold for -- let's see, it was 15.46 acres, sold for $3,865,000 and that represented $250,000 per acre.

Q: Was this property located on the Intracoastal Waterway?

A: Yes, sir. It had frontage on the Waterway.

Q: Are all your comps this far properties that were on the Intracoastal Waterway?

A: Yes, sir.

Q: All right, sir. Then your land Sale 5 is where?

A: That again is in North Myrtle Beach and it's on the west

side of the Intracoastal Waterway and north of the North Myrtle Beach Connector. And that sold for a total of $6,802,000 and it totaled 40.4 acres.

Q: Okay.

A: And that was -- it sold for $168,366 per acre.

Q: And that sale occurred in 2005?

A: Yes, sir; it did.

Q: All right, sir. You have a sixth sale and what -- where was that and what did that bring?

A: The sixth sale is located down at Bucksport out of Conway and that was ---

Q: That would be as you go 701 toward Georgetown?

A: Yes, sir.

Q: Leave Conway here and go towards Georgetown?

A: Yes, sir. And that one sold in February of 2010, which was a month after the condemnation notice but the contract and the agreement was agreed upon prior to the date of the take, so this was an appropriate sale to use.

Q: All right, sir. And how much was that sale?

A: That sale was -- they had a marina there and they allocated the marina out of it and the land sold for $2,625,000, which was $39,296 per acre.

Q: All right, sir. Is that where the Bucksport Marina is?

A: Yes, sir.

Q: All right, sir. We're familiar with that. And those

constitute six comparable sales that you utilized in arriving at the before value?

A: Yes, sir, I did.

Q: All right, sir. Now, when you start that process -- now, let me back up. All those sales were Intracoastal Waterway related, were they not?

A: Yes, sir.

Q: And why were you looking for Waterway related lots or tracts?

A: You want to find the tracts that are most similar to the subject and it was Waterway frontage property.

Q: All right, sir. Now, Mr. Jayroe, when you start that process, I want you to come down so the Jury can see.

THE COURT: Stand next to that -- when you step down and stand next to that box that's right on the jury rail.

Q: Can everybody see this?

THE COURT: You'll have to move closer or either move that microphone right here, Mr. Jayroe, and stand next to that box.

Q: Can y'all see better now?

THE COURT: Yes, on the other side. See where that box is on the rail, on the jury rail. You've got to stand next to that. That's a microphone.

A: I'm sorry. Okay.

Q: All right, sir. Mr. Jayroe, now we're at a point where

we've accumulated the six comparable sales. Okay?
A: Yes, sir.
Q: And what is this chart?
A: This is the adjustment grid of all of the sales. When I said you adjust them, actually you adjust the plusses and minuses.
Q: Explain to the Jury, when you do a plus to a sale, what are you doing?
A: Plus to a sale would be mean that the subject was better and so you had to add value to the sale to bring it in with the subject, make it more similar to the subject. And the ---
Q: When you do a minus adjustment what are you doing?
A: A minus adjustment, you're saying that the comparable sale is -- has a better -- has more value or has a better location, it's higher land or it's, you know, it's whatever, but you penalize it and bring it back down to your opinion of what the subject is.
Q: All right, sir. Now, let's go on the chart and go to the top. What's over here on the left-hand side?
A: This is the subject information all the way down.
Q: This is the tract of land 131-acre tract of land?
A: Yes, sir.
Q: As you move to the right, are these your six sales that you list?
A: Yes, sir, they are.

Q: All right, sir. Let's just go through land Sales 1 and go down and show the jury how you dealt with that sale to arrive at a comparable value.
A: Okay. Excuse me. First, we'll put down how many the gross acres were on the top line here, then the amount of wetlands, the percentage of wetlands, the zoning and the sale date and the sales price. And then we begin making adjustments down here.
Q: All right. Now, how do you -- which adjustments did you make and how did you make them?
A: All right. Properties rights is first and this was fee simple. And so all of them were fee simple, so we didn't need adjustment to any of it. Then the financing adjustment, there were no special financing for it, so no need to adjust it there. Then the conditions of sale, this was an arm's length transaction and it didn't require ---
Q: When you mean an arm's length transaction, what are you talking about?
A: Two unrelated parties. In other words, if a father sells something to the son, he may be giving half of it to him. So, you can't really trust those sales.
Q: So, these are what you call arm's length ---
A: Arm's length sales.
Q: Compare sales?
A: Compare sales, yes, sir.

Q: I'm sorry. Go ahead.
A: And then the next thing you adjust if for the market conditions, is it going up or down or whatever. And, so, on this one, I adjusted it minus ten percent and that was -- let's see -- that netted it down to 71,5.
Q: All right, sir. Now, you made a market condition of minus ten percent. And what -- again, let's be sure the Jury understands what you're saying when you say market conditions.
A: Right. Since this sale in 2005 to the date of the take in 2009, this property or property in general had gone down approximately ten percent. So, I minused the ten percent there.
Q: Okay.
A: And then you get down ---
Q: So, you take into consideration the fact of market conditions when you made that adjustment?
A: Yes, sir.
Q: All right, sir. Now, and what's your net number there?
A: That comes out to 71,000.
Q: All right.
A: And then you get into the specifics.
Q: Let me be sure to get this -- you start with a sale in -- with 79,485.
A: Yes, sir.
Q: With the adjustment with market condition you adjust that

sale down to 71,000?
A: Yes, sir.
Q: Which has effecting the value of this property?
A: Exactly.
Q: All right, sir.
A: That's what we valued it on.
Q: Now, you do the physical adjustment, don't you?
A: Yes, sir.
Q: And go through that process and tell the Jury how you make those adjustments.
A: All right. The location adjustment, this is close to the subject to the location is similar so no adjustment was made for the location. The size adjustment, this is smaller so we have to deduct fifteen percent to get back down to a lower per acre value, so that's just the way -- that's the only way you can figure these out.
Q: Because this is a -- this tract is larger than the comp ---
A: That's right.
Q: --- than the comp, so you're taking that into consideration?
A: Yes, sir. It should -- it could sell less per acre than a smaller tract.
Q: All right, sir. What are your other adjustments?
A: Zoning and they all were equal. And we had seventy

percent wetlands, that was similar to what this had.
Q: So, you made no adjustment?
A: No, sir.
Q: In other words, where you got a zero, it's similar?
A: Yes, sir.
Q: Okay. So, you didn't deem it necessary to make an adjustment?
A: Correct.
Q: All right, sir.
A: And then go down and then physical adjustments they were similar and so no adjustments were made. Net adjustment was minus 15,000, I mean, fifteen percent, and then that yielded an indication of the subject property at $60,806 per acre.
Q: So, that's as of December 15, '09?
A: 2009, yes, sir.
Q: All right, sir. Now, I know -- did you and the appraiser, Mr. Haskell with the DOT use this same comp?
A: I think so.
Q: All right. And so you brought that comp down and indicated it had a value of $60,806?
A: Yes, sir.
Q: All right, sir. Then on land Sale Number 2, go through that process again.
A: Again, starting at the top, this address, two percent of the area was wetlands -- one acre was wetlands, so we plused

it two percent because it had less wetlands in a per ratio compared to the land -- compared to the acreage. Zoning was similar. It sold for 11,286,000, that sold for 202,621. And that includes the two percent that we plused the other. And we -- property rights, property rights were the same, fee simple. And we get back down to the market conditions and again as in Sale 1, property had been going down so we penalized it to minus ten percent there and so we adjusted the 202,600 down to 182,359. Then we took into consideration the location. It's in a little bit better location and a better ---

Q: Which is in a better location?

A: The comparable was in a better location so we minused it twenty percent.

Q: All right, sir.

A: And then the size adjustment, again, the smaller size so we had to minus it as being more percent. And then the wetlands, it had less, less wetlands, so we had to minus that. So, we had a minus forty-five percent yielding indicates on the subject there's a $100,297 per acre. Do you want me to go on to the next one?

Q: Yes, sir, please.

A: Okay. And Mr. Joe White was 10th Avenue here.

Q: That's Sales Number 3?

A: Number 3, right. And, it sold for 260,683 per acre. Fee

simple was the same. The financing, there was no special terms or conditions of the sale. It didn't have any conditions of the sale and, so, that the market conditions the adjusted at a minus thirty-five percent.

Q: Why was that?

A: The -- let me look at my -- I just need a -- we assume the debt had gone up and, you know, have increased in value and so that's why we penalized it minus thirty-five percent.

Q: That's penalizing it against this piece of property?

A: Yes, sir.

Q: Okay. Now, the adjusted price came down to what?

A: It came down $169,444.

Q: All right. And you started out with 260,683?

A: Right, yes, sir.

Q: And then what adjustments, physical adjustments, did you make to Sale 3?

A: Minus twenty-five percent because Sale 3 was literally downtown Myrtle Beach, so it's a much more valuable location. And then we did a minus ten percent for it had no wetlands, so we had to adjust that. And so that came out to minus thirty-five percent yielding the indicated value of 110,138 per acre.

Q: All right, sir.

A: And then Sandridge is next, near North Myrtle Beach ---

Q: Land Sale 4?

A: Land Sale 4. It is near the new connector bridge and

A: 70,000.
Q: $70,000?
A: Yes, sir
Q: And would Comparable Sale Number 1 be an indicator of your value of $70,000 an acre?
A: Yes, sir. That's the closest.
Q: And that's on Enterprise Road?
A: Yes, sir.
Q: All right. Now, once you get there and you get that done, what is the highest and best use of this property on the -- before the date of the take?
A: Development with single-family residential.
Q: And that's the way you appraised it?
A: Yes, sir.
Q: And then once you get that done and use the sales comparison approach, what do you begin to do then as to dealing with the value after the take? You've got 10.18 acres being taken by the DOT?
A: Yes, sir.
Q: All right. What effect did that take have on this piece of property in your professional opinion?
A: I think it pretty much ruined it. I mean it's not worth what it was and it devalued the property.
Q: All right, sir. Now, let's look at the approach that you made in the things you considered that affected the value of

the property. First of all, the take was for how much money -- I mean, how many acres?

A: 10.18 acres.

Q: All right, sir. And if you do that then how much did you determine at $70,000 an acre, how much was the take worth? What did the DOT owe the Landowner?

A: In my opinion the take was 70,000 times the 10.18 acres which was $702,600 for what they took.

Q: 7,012 or 7,000?

A: 712,600, excuse me.

Q: All right, sir. So we begin with that as the value for the property on the date -- the value of the take on that day?

A: Yes, sir.

Q: Now, to look at and consider damages to the remainder, the balance of the lands, did you undertake to do that?

A: Yes, sir.

Q: And what kind of process did you go through to arrive at whether or not the remainder had been damaged and, if so in what particular?

A: In the -- looking at it, the land had been cut in half, 35 acres on one side and 85 acres on the other side, so that's detrimental to the property.

Q: Well, why is it detrimental?

A: Well, it goes back to they heard Mr. Powell testify and we have to account for the pluses and minuses of the site. It

costs more to develop two subdivisions than it does to develop one subdivision. I mean, you've got to have the roads, you've got to have maybe a lift station on each one and all of a sudden the people on the thirty-five percent side may not have use of a clubhouse and any amenities built on the property. So, those properties, that property would probably sell for less than the larger tract left. Then you have everything from, from drainage to visibility. Every property on the site if you were to develop it is going to be looking at that seventy-foot bridge. And, you know, I notice everybody takes pictures on the Waterway of boats and barges and things but I don't think many people want to take a picture of a boat with the bridge in the back of it. So, you know, it's just not -- it's not appealing as much in the after and it's going to cost you more to develop the property. You have to set up two construction sites.

Q: Let's talk a little bit about the bridge itself and then the effect that the bridge has on the buying public or one buying a lot out there after the bridge is constructed. How many lanes of travel will be on this bridge?

A: It's gonna be six lanes.

Q: All right, sir. And I believe we heard the DOT engineer indicate the speed limit would be sixty miles an hour?

A: Yes, sir.

Q: Designed for seventy miles per hour?

A: Correct, yes, sir.
Q: Did you take into consideration, based on the information furnished to you by Mr. Powell, the effect of the noise from the bridge, and I think the testimony is at one time it was 37,000 vehicles a day or 35,000, that meant crossing the bridge every day, what effect would the noise have on the buying public and buying a lot?
A: Well, it would, it's bad on it because you -- an area like we have, we have a lot of Waterway property. So, this site would probably be the last one you would buy if you were a developer and time value of money comes into, comes into that. So, if it takes longer to sell a tract of land you have to take into consideration how much money you lost during that time if your money had been in a savings account, if it had been somewhere else drawing or earning money, so ---
Q: In your opinion, the buying public -- of course, looking at the tract in the before with no bridge and looking in the tract in the after with the bridge, what effect does that have in your opinion on the buying public as to what they would now buy a lot with the bridge basically going through the middle of this tract?
A: Overall, I think it would be very detrimental. I just don't -- I don't think that many people would want to live there and, if they did, they would have paid less because of the poor visibility because of the bridge being there. It's

-- the access, they might not like the fact that it is two subdivisions or, you know, one side can't get to the other side, you can't go under the bridge, so -- it's limited access. So, it's not the same, saying 131-acre subdivision that they could've built. They could've built a nice subdivision and had joint amenity centers and all of that and it would be more profit. So, the developers typically want to buy something that's gonna yield the highest profit for them and this has been put in the lower portion of desirability.

Q: You just moved down the scale of comparable competing properties; is that correct?

A: Yes, sir, it is. I mean, you would develop almost everything else before you even tried to develop this one.

Q: After you did your appraisal, do you recall whether or not DOT before you did your appraisal had in any way damaged the property from noise?

A: No, sir, not when I did my appraisal.

Q: So, after your appraisal was done, did DOT undertake to go back and look at noise?

A: Yes, sir, they did.

Q: All right, sir. And I believe Mr. Wilson indicated that about 19 acres had been damaged by noise?

A: Yes, sir, and he based that on the federal guidelines.

Q: All right, sir. But actually, what you were talking about is what a willing buyer would pay for a tract of land

with noise affecting or being visible and you can hear it?
A: Yes, sir. If you had a choice you would not buy one under a bridge or with a bridge in view, you would not.
Q: Or if you bought one, you would pay less?
A: Yes, sir, he would.
Q: And did you take that into consideration that maybe somebody under some circumstances would buy it if the price is right?
A: Yes, sir. There's always a buyer at the lower you lower the price.
Q: So, that's not to say that somebody wouldn't buy a lot there but they trade and take it, like buying a car, buying a new car is supposed to a used car?
A: Yes, sir; similar to that, yes.
Q: All right. Now, what did you consider -- obviously, Mr. Powell gave you some information, what are the things you considered that came out of Mr. Powell?
A: Let's see. We took everything into consideration when his, you know, access, visibility, noise, everything that -- we considered everything that he had in his report.
Q: Well, you've heard him testify, do you concur with what his opinions were?
A: Yes, sir, I do.
Q: All right, sir. Now, when you got to reconciling your values in order to arrive at your damage to the remainder, how

did you go about doing that?
A: We looked at sales that were on the Waterway and just off the Waterway to find out the difference between those two and we took a couple of sales from the Fantasy Harbor bridge and that's the one in Myrtle Beach they just built at the big mall. And adjacent to the bridge, the property sold for 110,585 per acre. Once you got 1250 feet away from the bridge, it jumped up almost three times to $291,651 per acre.
Q: What does that tell me?
A: That's telling you the close of the bridge, the cheaper the land is. That's the bottom line.
Q: And that was not the condition when it was 131 acres without a bridge?
A: No, sir.
Q: What else did you consider?
A: Well, we looked at these two sales as paired sales to show on and off the Waterway. Then we looked up Intracoastal Waterway frontage sales and second row sales, ones that would be just off, and we used about ten of those sales and the further you get away from the bridge, the higher price the land was.
Q: What does that tell you?
A: That's telling you that the closer the bridge is, the cheaper the land is and that the range was -- 500 feet was $274,000 and when you got 2900 feet this one was $369,880 and

that was the way it was with every one of the sales. And we've used like ten of each, ten Waterway and ten off the waterway. So, that gave us an idea of how land was selling off the Waterway -- I mean, off, away from the bridge but it also told us that whether you are 500 feet or you were 3,000 feet it all lowered the price the further away you got.

Q: I believe Mr. Wilson indicates that there was noise throughout this tract in the after, some kind of noise ---

A: Yes, I read his report and he -- I think he was just talking about what the Federal Government said they had to put up a berm or had to put up a wall or whatnot. But, the noise that's going from the bridge is going to go over the whole land. I mean, it might not be as high as the government says that but the general buyer will know that. And if they go out and look at a property and they walk the site, they are going to be able to hear that bridge. I mean, it's right there.

Q: And that wasn't there in the before?

A: No, sir.

Q: All right. So, when you get to that and you arrive at that, what things -- have you covered all the things you considered in determining whether or not the property had been damaged in the after?

A: Yes, sir. What we did was use the -- totaled all the damages, everything we've talked about from visibility to drainage to access, everything, and noise and took it into

consideration some sales that we had used were -- the bridge proximity showed a decrease from twelve to forty-six percent. And in the final value I used -- I damaged the smaller side by forty percent ---

Q: Which side? That's the 35 acres?

A: The 35-acre side on -- I damaged it by thirty-five percent.

Q: All right, sir.

A: And then I damaged the -- excuse me -- forty percent for the eastern side, I guess ---

Q: How many acres was that?

A: That's the thirty-five.

Q: Okay. That's as a result the severance?

A: Yes, sir. And all the other information of sales. And then the western side, only damaged it thirty-five percent because it's longer and the further away, the more valuable lots would become. So, that had a chance to recoup a little bit. So, that was the difference in that. And, let see, the -- going back to the development part, more cost to develop and the, the damages that we came in -- when you multiply them out, the, the small site came out to 1,483,000 and the large site came out to 3,908,000 and the damage of the severance, which would be the added costs and everything, was 200,000 and that was in the after. In the after, the value dropped from 9,000,000 to 5,191,925.

Q: All right, sir. So, you -- so, you effectively took into consideration the damages for the severance, the noise, proximity and those things in the tract?
A: Yes, sir.
Q: All right, sir. And how much did you say the tract was worth after you dealt with the damages and the take?
A: Well, the, the site was worth 5,191,000 after.
Q: Okay.
A: And you -- first, you subtract the ---
Q: I'm gonna need you to come down and look at the chart for me.

Now, you just talked about the east remainder of 35.31 acres with the before value of $70,000?
A: Yes, sir.
Q: And you did the after value was how much?
A: That's -- damage did by forty percent, so it was only worth sixty percent of the before. And it went from 70,000 to $42,000 an acre. And that -- there's the total $1,483,020. And then the larger tract of 85 that's left, and then we did thirty-five percent multiplied by sixty-five percent, that value is now 45,500 is the value of that per acre. And that's 3,908,905. And you've got the damages for severance and that takes ---
Q: Now, the severance means what? Dividing the ---
A: Dividing and having two subdivisions to develop instead

of one. And that was 200,000. So, the after value of the site, the total site was $5,191,925.

Q: Now, go through your summary of values and how you got to your damages.

A: All right, sir.

Q: Can all of y'all see this okay?

A: The original value was 9,198,000 and the taking was 712,600, that was at the original 70,000 per acre.

Q: For the 10.18 acres?

A: Yes, sir. That's 712 and so you subtract that from the value estimate and then we came back and we came to these numbers after I adjusted them for location and everything else and that subtracted out, here's the after value, here's the before value, and the difference was 3,293,475. Then you add back the take that was 712,000 and so the ---

Q: So, you're not double dipping?

A: No, no, no, it's separate. That's why you take it out up here so you don't do that.

Q: But that's not double dipping, is it?

A: No, sir. No, sir. And so the value of the taking and the damages to the remainder was 4,006,075 and it was rounded to $4,010,000.

Q: Is that your opinion as of December 15, '09 of what just compensation would be to the Landowner?

A: Yes, sir. This is -- represents the value of the taking

and the damages for the remainder.

Q: All right, sir. Go back to your seat.

Would you answer any questions that Mr. McCutcheon might have?

A: Yes, sir.

THE COURT: Cross examination.

MR. MCCUTCHEON: Thank you, Your Honor.

CROSS EXAMINATION OF JAMES R. JAYROE, JR. BY MR. MCCUTCHEON:

Q: Mr. Jayroe, how are you today?

A: Fine.

Q: And you and I know each other quite well, do we not?

A: Yes, we do.

Q: And most of the time, you're on the opposite side from me?

A: Yes, sir.

Q: And, Mr. Jayroe, when is the last time you represented or testified on behalf of the DOT in a highway condemnation case?

A: I'm not sure, but years and years ago.

Q: How many years and years?

A: Between five and ten, something like that.

Q: Between five and ten years. In other words, you haven't done one since?

A: No, sir.

Q: And 100 percent of the ones you've done since that time have been on behalf of the landowner?

A: Yes.
Q: Can you give us any idea as to how many that would be?
A: No. I, I've done ---
Q: Thousands?
A: No, no.
Q: Hundreds?
A: Maybe something under a hundred like that over the last ten years or so.
Q: How many did you do on Highway 707 for the Landowners when they widened Highway -- I'm sorry, Socastee Boulevard?
A: Oh, yeah. I think we're still working on some there but two dozen, something like that, maybe.
Q: And maybe I got my -- what I'm talking about, Mr. Jayroe, are properties from Socastee High School down to 17 Bypass.
A: Okay, well -- but you're adding in two because Socastee High School, that's where I did fifty-six for the Highway Department. That's where I did fifty-six for the Highway Department and the other ones ---
Q: On one end?
A: Yes, sir.
Q: You did fifty-six for the Highway Department on one end, correct?
A: Yes, sir.
Q: And how many did you do for the Landowner on that same project?

A: I did none of them.
Q: Sir?
A: None on that -- none on that project not the ones I did ---
Q: Same road, though.
A: Yeah, same road but about -- less than what I did -- less in numbers than what I did for the Highway Department.
Q: So, you did -- you did both for both, the Highway Department and the -- on the same project. That road was one project, wasn't it?
A: Yeah, but ten years apart.
Q: Sir?
A: Ten years apart. I mean, it's when they ---
Q: You didn't do any at the same time for the Landowner and the DOT on the same highway, Highway -- down in Socastee on the same highway for Bruce -- the nursery and those pieces of property?
A: I'm not sure. There may be one that we did but I'm not sure it's -- you know, so many ---
Q: And -- but you haven't done -- how many have you done for Mr. Bellamy?
A: The majority of them have been for Mr. Bellamy.
Q: And is Mr. Powell also in the majority of those?
A: Most recently, yes.
Q: All right. And as I understand, you have relied heavily,

have you not, on Mr. Powell's findings in arriving at your numbers?

A: Well, yes, I've -- I didn't give more weight to his other than information -- other than I get other information from other places.

Q: All right. But the bulk of it comes, does it not, from the noise because that's what he says in his report.

A: Well, that's just the noise part. See, I'm talking about -- my damages are for noise, access, the added costs to develop the subdivisions, everything, visibility, you're looking at a bridge and not cypress trees.

Q: Well, what kind of visibility problems did this piece of property have in the before? It was on a -- it was not on a heavily traveled road, was it?

A: No, we're talking about visibility, aesthetic visibility from what you might build there, a house. I mean, you would rather have the Waterway and the other side of the Waterway green that have a bridge going across.

Q: Okay. Well, how many feet does he have -- do they have left on the Waterway on the bigger remainder?

A: I think -- I think 1700 or something like that. I'm not sure.

Q: Okay. And how far away is that from the bridge? A pretty good ways, right?

A: Well, 1700 but you'd still be able to hear it and you'd

still be able to see it.
Q: Okay.
A: And you've still got all of the other damages that I've put in there all cumulatively.
Q: And all up and down the Waterway, Mr. Jayroe, there are properties that have been built in close proximity to the bridges, have they not?
A: Yes, sir.
Q: And in particular, there's one or two at the Highway 544 bridge?
A: Yes, but that's a different kind of bridge, too.
Q: Okay. Well, how -- what's the difference other than the two lanes added on each one?
A: Well, two lanes added on each ---
MR. BELLAMY: Objection.
THE COURT: Yes, sir?
MR. BELLAMY: The objection is there's no foundation.
THE COURT: Well, I appreciate it. He's asking a question and I'm going to allow the witness to answer it if he can.
BY MR. MCCUTCHEON:
Q: All right. Is there any ---
THE COURT: I'm sorry. I thought he we still answering the question.
A: No.

Q: Are you finished?
A: Yes, sir.
Q: Mr. Jayroe, if you look at the -- with the difference being that there's one more lane on each side, what is the difference between the 544 bridge and this bridge?
A: I'm not that technical, I don't know. I mean, it's a bigger bridge, it's got faster speed limit, one's fifty and one's gonna be -- the subject is gonna be sixty. I mean, that's pretty major.
Q: But there are ---
A: That's a different bridge -- I mean, that's a different bridge.
Q: You would agree with me, though, that there are two developments, one on each side of that bridge?
A: I agree and I believe that they -- all of them will reflect lower prices.
Q: Okay. Did you search that to see?
A: Yes, sir. We searched all of them. We -- just, you know, we put them together and found out where we thought we were more comparable to the subject.
Q: All right. Now, speaking of your comparable, Mr. Jayroe, isn't it true, sir, that only one of your comparables is really a comparable?
A: No.
Q: Even though you had to go across the board, except on the

first one, now. I think you told me that on the first one that this was the one that was closest to the subject property?

A: Correct.

Q: Correct?

A: I believe so, yes.

Q: Where is it located? It says Enterprise and Bay Road.

A: It's in the Socastee area, same location.

Q: How far from this piece or property is it?

A: I don't know, I haven't measured.

Q: Does it front on Enterprise or does it front on Bay Road or both?

A: It's -- I don't know. I don't know.

Q: You don't know whether it fronts on ---

A: No. I've got a map here to show where it is but ---

Q: Sir?

A: I said, I have a map in here and it doesn't always show the roads, the maps don't.

Q: Now you can't tell this Jury whether it's on a road like Peachtree or some other road?

A: Yes. Yes, I can.

Q: Okay. Well, that's what I was ---

A: The north side of Enterprise Road at the terminus of Bay Road.

Q: Okay. And how far is that from the subject property?

A: Again, I still don't know.
Q: You don't know.
A: You just asked it a minute ago and I still don't know.
Q: Okay. And Enterprise Road is down 707? Off of 707?
A: Yeah.
Q: Okay. It's not on -- that piece is not on the Waterway, though?
A: Yes, it is.
Q: On that piece? This piece is on ---
A: Yes.
Q: Is it near Enterprise Landing?
A: I don't know. I'm not sure where ---
Q: All right, sir. Let me -- and I apologize for my ignorance and I'll try to undo my ignorance if I can. This piece of property, is it on the Waterway?
A: Yes, my map shows it on the Waterway.
Q: All right. So, this piece of property is on the Waterway?
A: Yes, sir.
Q: It's in the same vicinity as the subject property; is that correct?
A: Correct.
Q: And it contains 52.84 acres, correct?
A: Yes, sir.
Q: Do you have any idea how much frontage you had on the

Waterway?
A: 1680 feet of frontage on the Waterway.
Q: And this one, I think you said, or would you agree with me that this is the most comparable piece on your board?
A: It may be but I think that the subject being more secluded down the road would be more desirable than right there because there are some mobile home things on the Waterway in that area, the Socastee area.
Q: Do you or do you not agree with me, Mr. Jayroe, that this is the best comparable for the subject property of any on your board?
A: Well, it may be but, I mean, it's -- the reason I'm looking for that is it's got the least number of adjustments so that would mean that it's most, most -- it took less adjustments.
Q: That means is most -- it's more -- it's most comparable of the ones on the board?
A: Correct.
Q: And it's -- it's on the Waterway, right?
A: Correct.
Q: And if -- you know, you can't tell us how far it is from the subject property. Now what about Enterprise Road, is that a heavily traveled road?
A: No, not really.
Q: Is similar to Peachtree?

A: Peachtree probably has less but I've never -- I have not looked at traffic counts. I just know from being in real estate forty, fifty years down here.
Q: Enterprise would be pretty similar to Peachtree?
A: So-so but not really.
Q: Not really?
A: Not really. But it's similar, it's closer but, you know, one sale does not make an appraisal, so we have to put them in and adjust them and come up with the value.
Q: But my question is, Mr. Jayroe, is, all of these others have -- except for the first one, have gigantic adjustments?
A: Exactly. We can't make them up, we have to use what's available and the more sales we have, the better indication that gives us of the value.
Q: But these, these up here have big, big numbers, right?
A: Well ---
Q: This bridge ---
A: Waterway properties sell for big, big numbers, normally.
Q: Okay. All right. Well, this one is in almost downtown Myrtle Beach, right?
A: Yes, sir.
Q: This one is going into North Myrtle Beach?
A: Right.
Q: Old Sandridge Road, North Myrtle Beach, 55.70 acres, Sandridge Road, Old Sanders Road. Old Sanders Road is near

North Myrtle Beach, too, isn't it?
A: Yes, yes.
Q: All of these are North -- that was -- that's Myrtle Beach and these are North Myrtle Beach?
A: Right.
Q: And then why did you use the one in Bucksport? That ain't nowhere near comparable, is it.
A: It's the least comparable but we had the information and it was on the water, you know, the same thing. It was a sale that -- we used as many sales as we were comfortable.
Q: All right. This is one on the Waterway, 6?
A: Yes, but see its location is way back, I mean, you've got to go up a piece to get to it.
Q: That Bucksport -- that Bucksport area has a lot of people and Bucksport Landing has a lot of traffic down there though, doesn't it?
A: It does. It's better for boats than it is for cars, though.
Q: Well, you've got to ride your car and pull your boat to get down there, don't you, some of them?
A: Right. Well, some of them may have them in the water somewhere.
Q: And then, sir, if -- just for the sake of argument, if you use this sale right here ---
A: Which sale?

Q: The first one.
A: Okay.
Q: The one that you might somewhat agree is the most comparable sale.
A: Correct.
Q: Your land value is about $61,000 adjusted ---
A: That's what it adjusted, yes, yes.
Q: Okay. About 61,000. I assume you have reviewed Corbin Haskell's appraisal?
A: I didn't review it; I read it.
Q: You read it?
A: Yes, sir.
Q: And I think you asked some question at one point in time about whether or not when he initially did an appraisal, he didn't assess any damages; do you remember that?
A: Yes, sir.
Q: But since that time, he did a subsequent appraisal and assessed damages, correct?
A: Yes, two or three times.
Q: Well, he's done an appraisal once and a letter the second time changing the numbers? Do you agree with that?
A: No.
Q: You don't?
A: No.
Q: What was in the the -- what was in his second appraisal?

A: Well, the first appraisal that I saw was zero but then ---

Q: That wasn't Mr. Corbin Haskel, that was Mr. Ratchford.

A: Oh, okay. Well, that was what it was condemned as, so that what I used it, you know. And then Mr. Haskell had one that he did and he came up with 400,000 or 407,000 or something like that. He did another one and I think he kept the same and then he did another one with the addenda so that's three or four right there.

Q: Okay.

A: I mean, maybe it's the same appraisal but ---

Q: Do you understand why the second on in line -- the second one was done? And if you don't, that's fine. Why he did it again?

A: Well ---

Q: With basically the same ---

A: Well, he got evidence from the -- your sound man that part of the property was damaged.

Q: Okay.

A: And so, then he added that in. And then he did an addenda up in it again.

Q: And his number now 998,000 but what is his value per acre?

A: He started at 40.

Q: It's still 40, isn't it?

A: Okay. I guess.
Q: Have you looked at the thing recently?
A: Just glanced at it, I mean.
Q: And then you are, based on Mr. Powell's report, damaging the entire piece at least thirty-five percent?
A: Thirty-five and forty percent, yes.
Q: At least thirty-five. One part of it thirty-five and the other part forty?
A: Correct.
Q: And that's based on the things you've talked about?
A: Yes, sir.
Q: The major one of them is the noise ---
A: No, you keep saying that. No, it's not noise. It's just -- I mean, they might be equal. I didn't write down one was twelve percent and one was thirteen and one was fourteen and a half. I just took them all into consideration and just -- and made a decision as to what I -- what my opinion was that a knowledgeable buyer would pay for this land.
Q: But in his report, he only refers to noise -- excuse me -- and aesthetics.
A: Well, but that's Mr. Powell's report. My appraisal report has to use as much knowledge as I have or anybody else in my office has.
Q: The -- did you review the noise study?
A: I read it.

Q: You read it.
A: Yes, sir.
Q: And the noise studies found that as far as noise was concerned, the property was only impacted 19.3 acres?
A: Well, no, that's -- I don't think that's a correct statement. I think that he had the threshold and that's what he used and he only damaged the number of decibels within that area that he called the -- where they have to put up barriers and whatnot. But one step off of that area he's talking about has still got some. It might not be required by the federal government to put up a wall but a buyer would know better when he's out there looking at the property.
Q: Okay. Well, then he took -- he took these noise levels all over the piece of property, right?
A: No.
Q: 358 different places?
A: No, I think he said that's where his grid had done it. I think he said he used four places.
Q: I know that. Okay.
A: Okay.
Q: But didn't he use the other, which is the TNM modeling that is required by both the state and the federal government so you can determine what the noise levels will be on each one of those 358 points? Isn't that what he did?
A: Yes, that was a model but that doesn't put whatever the

machine is at all these areas.
Q: But you say that that -- that those numbers are not right?
A: I'm not saying that. I just don't -- I just -- I don't think four receptors and -- I mean, if he knew it was -- he was gonna quote the noise at the far end, why wasn't a receptor but there.
Q: I'm just asking you whether you think his numbers are right or wrong.
A: I don't know whether his numbers are right or wrong. That's not my field.
Q: Just out of curiosity, sir. If you applied your damage percentage to the 19.3 acres, what would it come out to be?
A: I can do that.
Q: Would you, please?
A: Ask me the question -- what am I doing?
Q: If you damage the 19.3 acres instead of the entire remainder at forty percent, what does it come out to be?
A: At what price?
Q: At your price, your price per acre, whatever it is.
A: Well, I was at 70,000 per acre.
Q: Okay.
A: But I don't know how much he would -- how much he damaged it. I mean, he ---
Q: I'm asking you to do it on the 19.3 acres ---

A: All right.
Q: --- assuming that that's what was damaged in the after.
MR. BELLAMY: That's not his testimony, Your Honor, I object.
THE COURT: I understand that. I understand it's not his testimony. Mr. McCutcheon is asking him to do some hypothetical, so I'm going to allow him to do that.
BY MR. MCCUTCHEON:
Q: What I'm asking, sir, can you extrapolate and tell me what the damage to the 19.3 acres would be based on a forty percent reduction per acre.
A: Okay.
Q: Take 19.3 ---
A: I got it.
Q: --- and multiply it by .. -- by 70.
A: All right.
Q: What is that number?
A: 1,351,000.
Q: Now, take the difference, take forty percent off of that.
A: 810,600.
Q: Thank you. I don't have any further questions.
THE COURT: Go ahead, Mr. Bellamy.
REDIRECT EXAMINATION OF JAMES R. JAYROE, JR. BY MR. BELLAMY:
Q: Mr. Jayroe, that's not your opinion as to the damages to this tract of land?

A: No, sir.
Q: No, sir. You've testified fully the entire tract was damaged, just not 19 acres?
A: Yes, sir. And that's based on my being a realtor in this market for forty-five years.
Q: All right, sir. When you looked at Mr. Haskell's appraisal using Tract 1 on Enterprise Road, do you recall that he came up with a value of 88,405 after he made the adjustments?
A: I don't remember.
Q: All right. In fact, his adjustment was 66,303 and your before value is 70,000?
A: Yes, sir.
Q: All right. That's giving your opinion now, sir?
A: Yes, sir.
Q: And you're still of the opinion that the damages are as you have testified?
A: As they are.
Q: Thank you, sir.
THE COURT: Anything on those questions, Mr. McCutcheon?
MR. MCCUTCHEON: No, sir.
THE COURT: All right, sir. You may step down. Thank you very much.
MR. MCCUTCHEON: Your Honor, could we approach the bench before you excuse the Jury?

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

THE COURT: All right. Ladies and gentlemen, we're gonna need to give you an extended break so that -- to allow counsel to make sure that -- and with that, I'm sorry, Mr. Bellamy, are there any further witnesses on behalf of the Landowner?

MR. BELLAMY: No, sir, Your Honor. That is the Landowner's case.

BY THE COURT:

THE COURT: All right. Very good.

That being all the witnesses from the Landowner. Now, the Department has two witnesses, I believe, but one of them has not arrived and Mr. McCutcheon has asked for leave to make sure that he preserves them in a certain order. The one that hasn't arrived is the one he needs to put on first. So, that being said, I'm gonna want you back so that you can come back into the courtroom at 2:30. That's gonna be an extended break. So, Mr. Bailiff, you tell them when you want them downstairs so we make sure that we can come back in the courtroom at 2:30. All right? So, y'all are excused to go back to the jury room and the Bailiff will tell you when to come back downstairs.

Yeah, just leave the pads and pens in your chairs -- leave them in the chair, the pads and the pens. Thank you.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the Jury.)

THE COURT: All right. We'll resume back so that we can come back in the courtroom at 2:30. All right?

MR. MCCUTCHEON: Thank you, Your Honor.

MR. SHELTON: Yes, sir.

THE COURT: Mr. Shelton, tell me the bottom line just compensation figure so I make sure I wrote down the figure correctly?

MR. SHELTON: $4,010,000.

THE COURT: 4,010,000?

MR. SHELTON: Yes, sir.

THE COURT: Very good. I just wanted to make sure I wrote it down correctly. Thank you.

All right. We'll be at ease. Thank you very much.

(RECESS.)

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: The following takes place outside the presence of the Jury.)

THE COURT: Be seated, thank y'all.

All right. Is the Landowner ready for the Jury?

MR. BELLAMY: Yes, Your Honor.

THE COURT: All right. Mr. McCutcheon?

MR. MCCUTCHEON: Can I have thirty seconds, Your Honor,

to make sure all my witnesses are ---

THE COURT: Yes, sir.

MR. MCCUTCHEON: Thank you, Your Honor.

THE COURT: All right. Very good.

Ask the Jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Mr. McCutcheon, your witness, please.

MR. MCCUTCHEON: Yes, we call Mr. Josh Wilson to the stand, Your Honor.

THE COURT: All right, sir. If you'd come around, Mr. Wilson and meet the Clerk right over there, please, sir.

JOSH WILSON, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: State your name for the Court, please, sir.

MR. WILSON: Josh Wilson.

THE COURT: Spell your first name, please.

MR. WILSON: J-O-S-H.

THE COURT: Very good. Go ahead, Mr. McCutcheon.

DIRECT EXAMINATION OF JOSHUA JOHN WILSON BY MR. MCCUTCHEON:

Q: Mr. Wilson, I want you to talk real loud. I want you to talk to me so that way we'll know that all of the jurors can hear what you have to so.

State your full name for the record, please.

A: Joshua John Wilson.

Q: Could you get a little closer to the mic, please?
A: Sure. Joshua John Wilson.
Q: And how old are you, Mr. Wilson?
A: Thirty-six.
Q: And where do you currently live?
A: I live in Shermans Dale, Pennsylvania.
Q: All right. And what's Sherman Dale near?
A: Oh, it's about a half hour west in the hills of Harrisburg.
Q: All right. And what do you do for a living, Mr. Wilson?
A: I am the noise analysis program manager for McCormick Taylor.
Q: What is McCormick Taylor?
A: They are a civil engineering firm, environmental and civil engineering based out of Philadelphia, offices in Charleston and Columbia as well.
Q: All right. And your title is what?
A: I am the Senior Noise -- Transportation Noise Analyst.
Q: And can you tell me exactly what that means, Senior Traffic Analyst?
A: Traffic Noise Analyst, yes. We perform a variety of traffic or transportation noise analyses for state departments of transportation and the federal government involved with the environmental clearance phase when it went on a roadway as being proposed in a location or a modification of that roadway

much like -- noise has to be analyzed much like wetlands threatening an endangered species, all the other subject matters under NEPA, which is the National Environmental Policy Act.

Q: All right, sir. And you do that for a concern called McCormick Taylor?

A: Correct.

Q: And how many noise analysts do you supervise currently?

A: Seven.

Q: Seven. Are you what we call the head man, where the buck stops?

A: I guess, yes.

Q: All right. And how long have you been doing that type work?

A: Almost fourteen years.

Q: All right. Now, I want to go back just a little bit and ask you a little bit about your background. I assume -- did you graduate from high school?

A: Yes.

Q: Where?

A: West Perry Senior High School.

Q: And you graduated when?

A: 1996.

Q: All right. And did you further your education beyond graduation from high school?

A: Yes.
Q: And where did you go?
A: I went to Shippensburg University.
Q: And Shippensburg I assume is in Shippensburg, Pennsylvania?
A: It's in the town of Shippensburg; it's a state school, yes.
Q: And is it a four-year institution?
A: Yes.
Q: And what did you study at Shippensburg University?
A: I -- my major was in Geoenvironmental Studies.
Q: All right. Now, you just confused me. I don't know what that big long term means so I'll need for you to explain it to me.
A: Okay.
Q: What's Geotechnical -- Geoenvironmental Science; what does that mean?
A: It's a preparatory degree for the consulting field. It involves a lot of land use planning. A lot of earth science, you know, understanding soils, hydrology, physics, basically all of the earth sciences with a planning focus as well.
Q: All right. Now, and you finished and got a -- as I understand, a BS degree?
A: Bachelors of Science, yes.
Q: And when?

A: 2000 -- December of 2000, I graduated.
Q: All right. And did you further your schooling and/or training beyond that?
A: I did. I went to work immediately after from McCormick Taylor but then took night classes for a Masters of Science in the same field.
Q: All right. Now when did you go to work for McCormick Taylor?
A: January 2001.
Q: And in what capacity did you go to work for McCormick Taylor?
A: I was hired as an environmental planner, was there about two months before there was a need that arose in the Noise Analysis Services and I've been there ever since.
Q: All right. And you also said that while you were doing that, you took courses to get some other kind of degree?
A: Yes, any noise analyst that wants to do federal government or state DOT work has to have one or probably both certifications. The first is the Federal Highway Administration transportation noise model, which is the model, the predictive model, that we all used in the industry, there's a certification involved for that. Also, the National Highway Institute offers courses for -- a weeklong course. It's for certification for the fundamentals of highway traffic noise.

Q: All right, sir. And are you required to have those two certifications in order to do what you did in this case and that is, you know, undertake to do a traffic noise analysis?
A: Most states I work in, most states in the union, require a TNM certification. Most of the ones, as well, require the second NHI certification as well but definitely the TNM.
Q: Tell me again, if you would please, sir -- and I'm gonna probably stay confused a whole lot during your testimony because I know absolutely nothing about noise analysis other than what you taught me earlier. And this traffic model, what exactly is that?
A: It is a three-dimensional prediction model that incorporates -- has the ability to incorporate the design of the roads, proposed design, proposed traffic volumes, speeds, composition and we are able to turn that into a real-world scenario because it is spatially relevant, it is based on real-world coordinates and then select receptors to predict sound levels at.
Q: And how do you go about creating this model that you just talked about? Well, before I do that, Your Honor, I would like to offer Mr. Wilson is an expert in the field of traffic noise analysis engineer.
MR. SHELTON: No objection, Your Honor.
THE COURT: All right. Do you wish to voir dire the witness or challenge his qualifications?

MR. SHELTON: No, Your Honor.

THE COURT: All right. Very good. He's qualified to give his opinion. Thank you.

BY MR. MCCUTCHEON:

Q: Now, Mr. Wilson, I think I was asking you about this traffic model and I think that I've probably got ahead of myself a little bit but that comes as one of the steps, does it not, in the process that you undertake to make this traffic analysis on this piece of property?

A: Yeah, that's the only approved, federally approved, predictive noise model available right now for Highway noise.

Q: It's approved by whom?

A: The Federal Highway Administration.

Q: And that's the same concern that you are certified by?

A: Yes.

Q: Now, at some point in time -- before I ask you that, though, what exactly -- and I don't want you to go through any detail but what are you attempting to do when you do a traffic noise analysis?

MR. BELLAMY: Your Honor, could we have a sidebar conference?

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

THE COURT: Go ahead, Mr. McCutcheon.

MR. MCCUTCHEON: All right. Thank you, Your Honor.

BY MR. MCCUTCHEON:

Q: What are you -- I think my question was, sir, what is your goal when you are retained to do a traffic analysis study?

A: In a nutshell, we're required on federally funded projects to identify areas that are impacted by noise by the project.

Q: Okay.

A: And then evaluate -- if warranted, evaluate potential noise abatement alternatives.

Q: And in doing that then you have to establish the traffic noise level in its entirety on the piece of property that you're talking about?

A: The general consensus and rule is to evaluate the worst case -- for residential properties, the worst case outdoor use area.

Q: And in this case, did you do that?

A: We took a little different approach this time around in the fact that this area is not governed or not -- does not really fall into a -- warranting a noise analysis to begin with. So, we wanted to predict the acreage that would fall under the noise impact threshold.

Q: What you mean when you say noise impact threshold?

A: The South Carolina Department of Transportation has two

noise abatement criteria that is for the future case. So, when we are predicting future sound levels, in reference to the project, if they reach 66 decibels, that's considered noise impact. That's called the absolute noise criteria. There is also another one which was appropriate here, which is a substantial increase in noise criteria. It's made for quiet areas today. You know, if it's a 15 decibel increase from existing to future, there's a 15 decibel increase, that's also said to warrant the same noise abatement considerations.

Q: All right. And did you take to determine by taking the required noise levels and so forth from this entire piece of property?

A: Yes.

Q: All right. And I'm going to ask you how you did that in a minute ago -- I'm going to ask you in a minute how you did that step-by-step and what I want to be sure now is, is you undertook to actually measure the traffic noise; is that correct?

A: We measured the existing pre-project sound levels at that this tract.

Q: All right. And you also, did you not, projected it out to a date in the future ---

A: Correct.

Q: --- 2030 ---

A: Correct.

Q: --- as to what it's gonna be?
A: Correct.
Q: All right. And when you did that, sir, when you undertook to arrive at the noise level, you did that to begin with based upon what was there?
A: Correct.
Q: And then beyond that, you did further steps and so forth to project out what it's going to be in the year 2030?
A: With the roadway operational, yes.
Q: With the roadway operation there. And the numbers that are contained in your report, correct me if I'm wrong, some of -- those are actual numbers, noise numbers, correct?
A: Correct.
Q: Some of them were shaded because they exceeded ---
MR. SHELTON: Your Honor, leading.
THE COURT: Mr. McCutcheon, don't lead your witness, please.
MR. MCCUTCHEON: Yes, Your Honor.
BY MR. MCCUTCHEON:
Q: The -- in your report, sir, you have about five or six pages that have numbers on them and those, as I understand, are decibel levels.
A: Correct.
Q: And those are the ones that you determined existed on this piece of property?

A: Correct.
Q: In 3358 different locations?
A: Correct.
Q: Which encompassed the entire property?
A: Yes.
Q: All right. And those are the actual numbers?
A: Those are the predicted numbers, correct.
Q: Predicted numbers?
A: Right.
Q: For the year 2030?
A: 2030.
Q: All right. And then are there some of those that were predicted that exceeded a certain decibel level?
A: Yes.
Q: And did you mark them somehow in your report?
A: Yes, we shaded the impacted area for the impacted receptors with a red shading.
Q: All right. Now, I'm assuming that since you're sitting in the chair you were contacted by me at some point in time to perform a task for me in this case?
A: Correct.
Q: When did I contact you and what did I ask you to do?
A: I believe it was in March or February of this year that you asked me to undertake a noise study for the specific Jericho tract.

Q: And in a sense you're sitting here, I assume you agreed to do that?
A: We did, yes.
Q: Now, in regards to that, was there certain information that you required in order to make your analysis?
A: Yes. We required the design files of what they are constructing today, the linear and digital design files in order to do our predictive modeling for the future scenario and the traffic data as well.
Q: Were you provided with the environmental study?
A: Yes.
Q: Were you supplied with the environmental study that was done in 2009?
A: Yes.
Q: And did you review that study?
A: Yes.
Q: What else did you say you got?
A: We received the noise models which were essentially used for using that traffic data that was used in that predictive model.
Q: What do you mean by that?
A: To predict future sound levels, traffic is modeled by traffic engineers as was done for the 2009 study and they used the worst case hourly traffic volumes of the day, of a 24-hour day, and that is what we used to err on the side of caution to

predict the actual loudest of sound levels, so -- for the year 2030.

Q: And that's what you did in this case?

A: Yes.

Q: Now, did you review the documents that were sent to you, sir?

A: Yes.

Q: And after you reviewed those documents, then what did you do?

A: We formulated a strategy and a plan to analyze, take that information and analyze the Jericho tract.

Q: Now, you keep saying we, is that ---

A: My staff and I.

Q: Your staff and I ---

A: Yes.

Q: Now, did you actually come down here ---

A: Yes.

Q: --- when the noise levels were recorded?

A: Yes.

Q: And who came with you?

A: Two of my mid-level scientists, his name was Jarret Dempshire, Ross Huttenale and to our South Carolina Regional Manager Dave Griffin. (REPORTER'S NOTE: Names spelled phonetically.)

Q: And where's Mr. Griffin from?

A: Charleston.
Q: Now, did you go -- what exactly did you do next? You met with me, I think, was the first thing.
A: Yeah, we met with you first and then progressed to the property to do some noise monitoring. We found the construction operations were still ongoing, so we spoke to the foreman and asked him for a time when construction would cease because we didn't want to capture that noise during our existing noise monitoring studies. So, he told us about 6:30 they would shut down for the day and we went out and took our levels between 7:00 and 8:30.
Q: All right. And why do you do it that way?
A: Because to get an accurate understanding of the existing noise environment, it's important to not include atypical noise sources which would be the construction of the new highway. So, it's actually to the benefit to model a quieter -- to monitor quieter because that noise impact threshold then is lower as well. So, we wanted to err on the side of caution or the property side in most every incidence. That's why we look at the worst case noise hour while we try to go with the -- when we're doing existing monitoring, the quietest hour of the day for a lower impact threshold.
Q: Okay. Well, why -- based on what you just said, when you use the worst-case scenario which is the highest traffic noise in a twenty-four-hour period, why did you not do that here?

A: Because there is existing, the existing condition, there is no traffic noise other than a few vehicles on Peachtree Road. So, we wanted to capture the true ambient condition by not having any traffic volume present.

Q: Now, you just used a word that I'm not sure I understand, ambient.

A: Ambient.

Q: What does that mean?

A: Existing, unaltered.

Q: And this piece of property fronts on Peachtree Road?

A: Yes.

Q: And it backs up or fronts on the Intracoastal Waterway.

A: Yes.

Q: Now, you've told me that you went out and talk to the head man of the construction or whatever to find out when they were going to quit.

A: Yeah.

Q: And once you found that out, then what did you and your fellow workers do?

A: We situated four noise meters, they were brand-new, we had been using them for about a year and we situated those with cameras with GPS equipment which we were able to spatially locate the location of the noise meters where they were on the property so we could then transpose them to mapping. Then, for half an hour, we took a noise measurement

simultaneously at all four sites.

Q: Why thirty minutes?

A: For ambient monitoring, it's important to monitor for a longer period so that you make sure it is a true ambient condition and you're not at a really quiet time or really loud time. Typical, if there is a roadway present, typically we would monitor between fifteen and twenty minutes to capture that noise or that ambient environment. But in non -- where there is not a roadway present, it's important to monitor longer periods.

Q: Now, there was a roadway present in this instance?

A: Uh-huh, (affirmative response), Peachtree.

Q: And, how did you determine where to put your -- you call them receptors?

A: Monitors.

Q: Monitors?

A: Yeah.

Q: How did you make the determination on where to put them?

A: Well, we knew there was noise that was gonna emanate from Peachtree Road a little bit based on the traffic volumes there. So, we wanted to capture that. We wanted to capture sites closest to Peachtree on the Jericho tract that would capture the noise, ambient condition because Peachtree is part of that ambient condition. And then we also wanted to gather two sites on the interior property that were more further

removed from Peachtree, the quieter areas.
Q: All right. And how many monitoring stations did you put out?
A: Four.
Q: And did you know at that time when you put those out what the footprint of the right-of-way and the bridge was going to be?
A: Yes.
Q: And did you make any determination as to where to place them in regards to that?
A: We tried to keep the monitors perpendicular from Peachtree and parallel to the proposed roadway.
Q: All right, sir. How far out beside the edge of the right-of-way, sir, did you place the monitors?
A: Oh my goodness. They vary between 150 to 350, 400 feet.
Q: How far?
A: Excuse me. Between 150 and 400 feet, they vary.
Q: Okay. And why did you put them in those locations?
A: Just to capture noise from Peachtree and then noise at the interior of the property and those were set in an instance to interpolate the existing noise levels for the 358 points we were gonna predict the future levels for later.
Q: All right. Now, there is a photograph on here, right there, can you tell me what that is a photograph of?
A: That is the Jericho tract and that is the 358 sites we

used to predict the future sound levels.

Q: And does it show on there where the monitors are or is that on this one? I know they're hard to find because the real small.

A: Yeah. The noise monitors are on the upper right.

Q: And how are they designated on the upper right photograph?

A: Site 1 through Site 4.

MR. MCCUTCHEON: Your Honor, I want to use this right now but I also want to introduce these pictures into evidence, these two.

MR. SHELTON: Your Honor, can we see them?

THE COURT: Yes. I'm going to allow the photographs in over the objection. So, have the two photographs marked. What numbers are those, Mr. McCutcheon?

MR. MCCUTCHEON: One and Two, Department's One and Two.

THE COURT: All right. I'm going to allow Department's One and Two in evidence over the objection of the Landowner. The board is not going into evidence, just those two photographs, so they'll have to be taken off the board.

DEPARTMENT'S EXHIBITS NUMBER ONE AND TWO

ADMITTED INTO EVDIENCE.

MR. MCCUTCHEON: I've got two more I need to ask him about. There are also photographs ---

THE COURT: All right.

BY MR. MCCUTCHEON:

Q: What are these two photographs also?

A: Those are site locations, Site 3 and Site 2, during the monitoring activities.

Q: Are those pictures of the monitors?

A: Those are our monitors, yes.

MR. MCCUTCHEON: We'd move to introduce those as well.

THE COURT: Any objection?

MR. SHELTON: Same objection, Your Honor.

THE COURT: All right. I'm going to allow photographs Three and Four. When we mark Three and Four into evidence, again, you need to take them off the board. They go in separate.

DEPARTMENT'S EXHIBIT NUMBERS THREE AND FOUR ADMITTED INTO EVIDENCE.

MR. MCCUTCHEON: May I publish them, Your Honor?

THE COURT: Yes, sir, you may.

THE COURT: All right. Mr. McCutcheon, you can continue.

BY MR. MCCUTCHEON:

Q: All right. Now, the -- once you -- I believe you just told us that you monitored from -- tell me what time you monitored from until.

A: Roughly, between 7:00 and 9:00, half-hour.

Q: For a half an hour?

A: Yeah.

Q: And what did you do once you gathered -- I assume -- I am technologically disadvantaged so you're going to have to bear with me. How do you get it from the machine that you're monitoring it in somewhere else if you need to?
A: Well, I've been doing this a long time and we used to do it via DOS programs, which is an old antiquated system, but the newer meters store their data on a basically like the same thing a digital camera does. So, we're able to take that and plug it into the computer and it downloads the data that we retrieved in the field.
Q: And was there -- were there readings from these four receptors, Mr. Wilson ---
A: Yes.
Q: --- and if so, what were they?
A: Bear with me, please.
Q: You're referring to Table 2?
A: Table 2, correct. Receptor sites ---
Q: Which is on page 7?
A: Page 7, correct.
Q: And what were those readings?
A: Where the receptor names R1 through R4, essentially R1 is Site 1, R4 is Site 4, and those levels are 49.5 decibels at Site 1, 43.4 decibels at Site 2, 49.2 decibels at Site 3 and 46.9 decibels at Site 4.
Q: And which ones of the two are closest to Peachtree Road?

A: Sites 1 and 3.
Q: And the other two then would be further away ---
A: More interior of the property.
Q: --- from Peachtree Road?
A: Yes.
Q: What do you do next with the information, Mr. Wilson, that you have collected in these monitors?
A: We organize it in a geographical information system, which is a GIS for short. And it allows us to take a high-resolution aerial photograph of the boundary of the tract, the proposed alignment of the roadway and these four locations. And what we did from there is to make a plan on how to evaluate the tract in the future, because those are the critical levels or the ones to compare to the noise abatement criteria. So, we used a perpendicular grid pattern, which is points with 100-foot spacings, perpendicular from the proposed alignment and that is -- it's common practice to do that for nonresidential, large expanses of tracts and that was in an attempt to determine the approximate acreage of predicted to be over the impact threshold.
Q: And one of the photographs, I think, that's going around actually shows these 358 receptor points ---
A: Yes.
Q: --- that you just told us about that you created and you created them by using a computer program?

A: Correct.
Q: All right. And you did that for what?
A: Excuse me?
Q: What did you do that for?
A: To predict the future -- each one of those locations would then have a predicted future sound level and from those sound levels, those predicted sound levels, we are then able to determine which exceed the noise abatement criteria and thus which are categorized as noise impacts.
MR. BELLAMY: (Inaudible.)
MR. MCCUTCHEON: Mr. Bellamy, please, I can't hear, Your Honor.
THE COURT: I'm sorry. They were discussing a point among themselves. It wasn't an objection. Go ahead.
BY MR. MCCUTCHEON:
Q: Now, the actual level -- and I want to be sure that the actual level would be increased?
A: Yes.
Q: Correct?
A: Yes.
Q: And to a certain degree that would be any impact ---
A: Yes.
Q: --- on the piece of property? You agree with that?
A: Yes.
Q: And then you also ---

MR. SHELTON: Your Honor ---

THE COURT: Yes, sir.

MR. SHELTON: May we approach?

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

THE COURT: Go ahead, Mr. McCutcheon.

BY MR. MCCUTCHEON:

Q: Mr. Wilson, you, as I understand, plugged the -- plugged them into a computer, correct?

A: Correct.

Q: And that computer, I would assume, analyzed all of the data. What all data exactly was put into the computer?

A: We utilized GIS -- I'm sorry -- USGS contours to determine the elevations of each of those 358 points because it is a three-dimensional model. We also utilized the design plans of the roadway, the traffic -- proposed traffic on roadway and the parapet for the bridge, you know, a thirty-inch, roughly a thirty-inch parapet that does -- we thought it was appropriate to include because it does offer some shielding of the noise on the bridge.

Q: Now, once you do that, I would assume that those numbers are compiled in a table?

A: Correct.

Q: And the table is -- could you tell me from looking at

that table what the predicted lowest noise amount number was in the highest number?

A: Bear with me one second, please. Looks like the highest is 64 decibels and the lowest, unless I'm missing one, appears to be 53 decibels.

Q: 53?

A: Yes.

Q: And then there's some that you have, sir, that you highlighted or colored in your, in your graph; is that correct?

A: Yes.

Q: And what do those colored ones indicate? What are they?

A: The colored ones, the ones in orange, represents noise levels that are predicted to exceed, meet or exceed the noise abatement criteria.

Q: And what exactly is the noise abatement criteria, sir?

A: There are two, the South Carolina Department of Transportation has two in their policy. The first is the absolute noise abatement criteria which is 66 decibels. So, you could have 64 decibels today and if the project brings 66 or 67, it's an impact, it's only a 2 or 3 decibel increase but it's an impact. In this case, because there was no roadway present, there's also a substantial increase the noise abatement criteria, which is said to occur when there is a 15 decibel increase from existing to the predicted future

scenario.
Q: How many levels exceeded that second one, the 15 decibels?
A: I could count them up here real quick for you. It looks like sixty-five.
Q: Sixty-five?
A: Sixty-five.
Q: All right, sir. And those sixty-five are showing on one of these photographs?
A: Yes. The one with the red shading.
Q: With the red shading?
A: Uh-huh, (affirmative response).
Q: Is that correct?
A: That's correct.
Q: And what does that depict?
A: That depicts the, essentially, the noise impact contour for the property assuming the roadway, you know, be operational in the year 2030.
Q: Now, when you did -- this picture shows a pond.
A: Uh-huh, (affirmative response).
Q: You have to say yes.
A: Yes.
Q: Or no, whichever one it was.
A: Yes.
MR. SHELTON: Your Honor, may we approach?

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

BY MR. MCCUTCHEON:

Q: Now, Mr. Wilson, are those actually -- are those in your opinion as a noise analysis engineer to a reasonable degree of noise analysis certainty are the noise impacts and the portion of this property that will be impacted by noise in the year 2030?

A: Yes.

Q: Now, why do you use the year 2030?

A: That is standard protocol for Highway improvement projects. Like I said, to err on the worst side of the residents or the worst case scenario, you would use the worst-case -- the design year, which in most cases isn't the opening year of the project, it's a design year, so it is what the project is designed for, that traffic for that year, et cetera, so that's what most, if not all highway -- federally funded highway projects are done.

Q: And that area encompassed in that red circle is 19.7 acres?

A: 19.7.

Q: Now, when you got your paperwork, Mr. Wilson, did you get the environmental assessment statement that was done in 2009?

A: Yes.

Q: And is that one of the documents that you reviewed?
A: We reviewed those, yes.
Q: Does that document -- and it applied to what, Carolina Bays Parkway Extension?
A: Yes.
Q: And does it include noise levels in it?
A: Yes.
Q: Okay. And they're are done at various places?
A: Yes.
Q: Along this particular highway?
A: Yes.
Q: All right, sir. And did you review that document?
A: I did.
Q: Did you find any noise decibel level in that environmental assessment study that was 80 decibels?
A: No.
Q: Was the highest one you found?
A: 75.
Q: And where was the one that was 75?
A: About a mile south of the property we're looking at now.
Q: Okay. Did you find ones closer to the subject property?
A: We did find one just north of Peachtree.
Q: And what was that?
A: They were 65. There was two on either side of the proposed roadway -- I'm sorry, one on either side, so two to

total and they were both 65 decibels.

Q: But, you found none that were 80?

A: No.

Q: What are these pictures of? Can you identify these?

A: Yes. This picture is showing the Jericho property, R358 receptors and the loudest receptor that we identified in the environmental impact statement, which was 75 decibels and that's shown by green, the green dot, that came out of the noise models that were prepared for that project. This picture is the two sites just north of Peachtree Road showing slightly under 65 decibels, 64.7 and 64.9 and those are green dots as well. You can also see the proposed alignment of the base parkway and our model receptors as well.

MR. MCCUTCHEON: We would move to introduce these, Your Honor.

THE COURT: Any objection?

MR. SHELTON: Yes, Your Honor.

THE COURT: Let me look at them, please. All right. Ladies and gentlemen, if you would go take a break for about two minutes and then we'll resolve this issue outside your presence. Leave your pads and your pens, please.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the Jury.)

THE COURT: Let's get the photographs marked by the Court Reporter first so that they are in the record.

DEPARTMENT'S EXHIBIT NUMBERS FIVE AND SIX

MARKED FOR IDENTIFICATION.

THE COURT: Sir, I want you to look at what's been marked for identification purposes as Department's Five and Six. I want you to look at those.

A: Okay.

THE COURT: First, tell me what they are.

A: These are aerial photographs of our model -- Department's Five is aerial photograph of, as is currently, with McCormick Taylor's modeling receptors and monitor receptors, the proposed roadway alignment and two locations in the FEIS noise model with their respective predicted noise levels.

THE COURT: All right. Now, do you know where these photographs came from?

A: These photographs came from RGA geographical database.

THE COURT: From your company's geographical database?

A: BING maps, it's public information, sir.

THE COURT: All right, sir.

A: All right.

THE COURT: But that's where they were produced from?

A: Correct.

THE COURT: All right, sir.

A: That's the data we utilized for the backdrop.

THE COURT: And approximately, as best you can tell me, when were they produced?

A: The ---

THE COURT: Those photographs just were produced today?

A: Well, the platform -- these photographs, yes, but the actual data in the photographs some time ago.

THE COURT: All right. The data from some time ago but the actual photograph, what it shows, you or someone on your behalf produced and then today?

A: Yes.

THE COURT: All right. Mr. Shelton, your objection now.

MR. SHELTON: It has not been produced to the Landowner in discovery.

THE COURT: Mr. McCutcheon, your response?

MR. MCCUTCHEON: My response is, Your Honor, that they were reproduced from the documents that were in the environmental assessment study in 2009. That's what he just said -- that's what he reproduced from the file.

THE COURT: Well, I appreciate that but they are not documents, they are not photographs that were produced in discovery. They may come from data that is in discovery, and, certainly, you can ask him questions about that. But the documents themselves were not -- the photos themselves were not produced to opposing counsel prior to allow them to examine them, prepare anything questions, prepare any testimony of their witnesses regarding them; therefore, I will not allow them into evidence. Thank you very much.

MR. MCCUTCHEON: May I make one further statement for the record?

THE COURT: Yes, sir, please.

MR. MCCUTCHEON: In our discovery, Your Honor, we refer to all of the studies including the EIS study and we made those studies and it says in our discovery that they are in my office and can be viewed and reviewed by the Landowner at their request.

THE COURT: And you can certainly ask him, your witness, questions about those studies. The problem is, the photographs that were just put in existence, came into existence today, were never produced to opposing counsel to allow them to prepare either for cross examination or questions for their witnesses. All right? So, Five and Six will remain for identification, not in evidence. Thank you.

All right. Since we sent the Jury out, we'll take a short break for five minutes. You can take a break, sir, but you may not talk with your attorney.

A: Okay.

(RECESS.)

*******OFF THE RECORD*******

(On the Record.)

THE COURT: Is the Landowner ready for the Jury to come back in?

MR. SHELTON: Yes, sir.

THE COURT: Very good. Mr. McCutcheon?

MR. MCCUTCHEON: Yes, sir.

THE COURT: Very good. Ask the Jury to come back in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Mr. McCutcheon, you may continue, sir.

BY MR. MCCUTCHEON:

Q: Mr. Wilson, I want to make sure -- I've somehow lost my train of thought and I apologize for that. But I want to make sure that I understand. I hired you to do a noise study, correct?

A: Correct.

Q: And you told me about the various documents that you used to determine the noise levels on this piece of property; is that correct?

A: We use documents for reference. We created our own independent analysis.

Q: And what documents did you reference?

A: We referenced the FEIS, the environmental impact statement noise analysis and their corresponding noise models and data.

Q: And you utilized that information, in turn, to extrapolate or come up with the numbers that you used in this particular case?

A: Correct.
Q: And you projected those out to the year 2030.
A: Correct.
Q: Is that correct?
A: That's correct.
Q: Now, in the environmental assessment studies, do they sometime have tables they give a general number as to what each -- what a vehicle, what type of vehicle emits what kind of decibel level?
A: Yes, for informational purposes in some cases.
Q: But that doesn't necessarily mean that that's what it is on this particular piece of property?
A: No.
THE COURT: Go ahead.
MR. MCCUTCHEON: It's their study.
THE COURT: I appreciate it. Mr. Bellamy, you can ask those questions on cross examination. Thank you. Continue on. Go ahead Mr. McCutcheon.
BY MR. MCCUTCHEON:
Q: And as I understand what you just told me, that those are general information purposes only or can be. They've got a long laundry list of stuff and it's got a semi-truck produces so many decibels, a regular car produces so many. And one of them on that sheet said 80 decibels.
A: The ones I've seen range from the limits of human sound

or human hearing, which is around 40, 35/40 decibels and which is like, you know, a recording studio, 50 decibels, for instance a dishwasher, really recognizable everyday devices that we would correlate those numbers to. That's the intent of that.

Q: All right. Now, but you -- what you actually did was you went out and you physically measured and then projected what those were in the year 2040.

A: Correct. They're hard numbers, yeah.

Q: And you did it pursuant to the Federal Highway standards?

A: Yes.

Q: And the State standards?

A: Correct.

Q: And did you find any number in your projection that was 80?

A: No.

Q: Did you find one that was 75?

A: Not in our analysis, no.

Q: Okay. There was one in the other study done, correct?

A: In the environmental impact statement, yes.

Q: But in yours, the highest one, as I understand, was 64?

A: Correct.

Q: And you found that 19.7 acres were impacted based on project?

A: Correct.

Q: Please answer any questions opposing counsel may have.

THE COURT: Cross examination.

MR. SHELTON: Thank you, Your Honor.

CROSS EXAMINATION OF JOSHUA JOHN WILSON BY MR. SHELTON:

Q: Good afternoon, Mr. Wilson.

A: Good afternoon, sir.

Q: When did you take the readings on the subject property?

A: July 1st of this year.

Q: Okay. So, you did not take them on December 15, 2009?

A: No.

Q: Okay. As we sit here today, you cannot with any level of professional reliable certainty tell this Jury what those noise levels were on this tract on December 15, 2009?

A: No.

Q: What type of client does your company typically have for these kind of studies?

A: We work for a variety of contractors, state governments, federal governments, private developers, utility companies; that's about it.

Q: When a state government or a federal government client hires you, what is that typically for?

A: For engineering studies in the broader picture and those associated environmental studies as well.

Q: Those environmental studies, are those the required documents you were talking about earlier that had to be done

in conjunction with construction of the bridge like this?
A: Yes, sir.
Q: Would you take a look at this document, please, and I direct you to -- well, first, tell me what is the acronym at the top right-hand corner of that document?
A: SCDOT, South Carolina Department of Transportation.
Q: So, is that a document they either produced or hired to have produced?
A: It appears so.
Q: If you'll turn to the next page, please, tell me what that document is a part of.
A: The title page says Traffic Noise Technical Memorandum for the FEIS.
Q: What is the FEIS?
A: Final Environmental Impact Statement.
Q: Is that one of those documents we were just discussing that have to be completed in order to ---
A: Environmental -- yes, Environmental Impact Statement.
Q: If you'll turn to the tabbed page, please. If I am sitting -- if I am standing on the edge of the pavement and a diesel truck goes by me, what decibels should I anticipate according to that SCDOT document?
A: At fifty feet, it says 85 decibels.
Q: Now, when you did this work for the other DOTs around the country -- for DOT here, you use that SCDOT noise abatement

policy; is that what it's called?
A: Yes.
Q: Going back to it one more time, just so it's clear to everybody, and that word abatement, what does that mean?
A: Abatement is the physical abating of traffic noise. So, in most cases, sound barriers or earth berms.
Q: Okay. So, we're just trying to stop the sound, the noise, from emanating outside of the berm?
A: Correct.
Q: And, in doing these studies, it is your goal to determine when abatement should be considered?
A: Yes.
Q: And recommended to your clients whether they should consider abatement?
A: There is basically a three-phased approach is that when -- the first part is identifying those areas that warrant consideration of abatement. And then the next part is looking at feasibility and cost effectiveness of that abatement.
Q: Okay. And when we talk about impacted areas, is that just the areas that would qualify for consideration of a sound barrier?
A: Yes.
Q: So, what you're advising your client is whether they should consider building a wall or a berm or whether the property is not impacted it just means it doesn't meet the

threshold to even require consideration for that; is that fair?

A: Do you mean in this case, sir, or ---

Q: Yeah, or when we're doing these studies for the DOTs to try to help them determine whether they have to put up sound walls, there's thresholds I believe you discussed with Mr. McCutcheon of 66 and for an increase of 15, those are just thresholds. If the decibels don't increase to those thresholds then the property isn't even considered for abatement; is that correct?

A: Correct.

Q: So, that's the whole purpose of your entire analysis is to determine that answer?

A: Correct.

Q: Okay. Are you a licensed real estate appraiser in South Carolina?

A: No, sir.

Q: Okay. So, you didn't come here to determine the property values on this tract?

A: That's correct.

Q: And you didn't come here to determine whether this bridge will change the property values on this tract?

A: That's correct.

Q: Now, you said a moment ago that the receptors were set at 150 to 400 feet. Do you remember in your deposition you told

me they were 100 feet outside of the right-of-way?
A: Yeah. Without the models here, their range, the closest one was about 100 feet.
Q: And did you talk to the Landowner prior to going out 400 feet into the tract?
A: No, sir.
Q: And just so we're clear, we keep talking about this 358 number, that's really, for lack of a better word, that's a fiction that a computer program creates, is it not? There's only four actual monitors that were talking about.
A: There was four actual monitors but they're only good for the determination of existing sound levels.
Q: Understand that. And none of the 358 points that the computer program plugged in was the same location as any of the sound monitors, wouldn't it?
A: That's correct.
Q: And you found that 65 out of that 358 points that the computer program created met that threshold, they were impacted, according to your analysis?
A: Yes.
Q: And that was roughly, although I know it's not exact, 200 feet in each direction along the bridge.
A: Right, with the more of an emphasis to the eastern side.
Q: Okay. And if you got to the edge of that 200 feet, the sound continues on, does it not, just not at a high enough

threshold to be impacted under the federal standards?
A: Correct.
Q: So, it's not as though you determined that the sound goes out 200 feet then stops?
A: That's not -- yeah.
Q: Did you monitor -- did you predict all of those areas outside that are not considered impacted, too?
A: Yes.
Q: So, you know what those levels are in the future?
A: Yes.
Q: Was there any point in any of those 358 receptors where there was no increase at all?
A: Let me look. It does appear that there was an increase, minor increase, at every receptor.
Q: So, there's no place on this entire 131-acre tract of land where there's not gonna be noise added because of this bridge?
A: Correct.
Q: This is a study that has been done by your company, before this bridge got approved and qualified for abatement, as a hypothetical, what could be done to a structure like this to reduce the emanation of sound from it?
A: Well, this particular property, under the 2009 SCDOT policy and the current, the 2014 policy, would not qualify for abatement consideration because it was not a permitted

residential land use.

Q: I understand that.

A: Okay.

Q: That's why asked you to consider the hypothetical.

A: Hypothetical, as being on a structure, the only option is a sound barrier.

Q: Okay. And what would that look like on a bridge of this nature?

A: They are typically limited to on a structure because of wind loading and -- to about 12 to 13 feet on a structure. So, that be the maximum height you could have on a structure, concrete or steel sound barrier.

Q: Or fiberglass, you said ---

A: Fiberglass, yes.

Q: Okay. And that would essentially channel the sound up and away from the property instead of letting it come down on it?

A: Correct.

Q: If you give me just one moment. I'll get my document back from you and I have no further questions.

THE COURT: Any redirect, Mr. McCutcheon?

MR. MCCUTCHEON: Yes, Your Honor.

REDIRECT EXAMINATION OF JOSHUA JOHN WILSON BY MR. MCCUTCHEON:

Q: Mr. Wilson, that last question was purely a hypothetical because it wouldn't qualify in this particular case because of

the fact that this property was not permitted?
A: Correct.
Q: And by permiting it, you mean want, sir?
A: In 2009, during the time of that policy was effective, the term was planned, designed and programmed and that's how we determine if a developable parcels was permitted for residential land use. If it was permitted, meaning if there was an issuance of a building permit prior to the date with a signature on the environmental document, then we should treat that as a residential area even though there may be no homes built. That has been since changed from the terms planned, designed and programmed to permitted. However, the theory is the same and the direction on how to evaluate that is the same. Now, you are to establish noise impact contours which is essentially what we did but it's not available for any federal funding for noise abatement without the issuance of a building permit.
Q: Thank you, sir.
THE COURT: All right, sir. You may step down. Your next witness, Mr. McCutcheon.
MR. MCCUTCHEON: Yes, Your Honor. We would call Mr. Corbin Haskell.
THE COURT: Please come around and be sworn. Meet the Clerk right over here, sir.

HARRISON CORBIN HASKELL, HAVING BEEN

DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF HARRISON CORBIN HASKELL BY MR. MCCUTCHEON:

Q: Good afternoon, Mr. Haskell.

CLERK: State your name for the Court, please.

MR. MCCUTCHEON: Oh, I'm sorry.

MR. HASKELL: Harrison Corbin Haskell.

Q: How are you doing Mr. Haskell?

A: I'm doing fine, a little hoarse, you'll have to excuse me.

Q: You are here at my request; is that correct?

A: That's correct.

Q: And did you perform a task or tasks in this case, Mr. Haskell?

A: Yes, sir, I did.

Q: And what exactly were the tasks that you were asked to perform?

A: We were asked to appraise the subject property as to the date of condemnation, December the 15th, 2009, subject to the new right-of-way.

Q: Now, Mr. Haskell, tell me a little bit about yourself. Where are you from?

A: I'm from Greenville, South Carolina. Excuse me. I graduated from the Citadel in 1978, went to work for the Robinson Company in 1981, received my MAI designation in 1999

and subsequently the state certification.

Q: All right, sir. And you are a real estate appraiser?

A: That's correct. I am a real estate appraiser and also have a brokerage license.

Q: A broker's license?

A: Yes, sir.

Q: A broker's license is what? You need some water, sir?

A: No. I've got some and I'm hoping this meant will help some.

Q: All right.

A: I manage the sales in the office.

Q: All right. And how long have you been doing appraisal work, sir?

A: Excuse me. About twenty-five, thirty years.

Q: All right, sir. And do you do both real estate and commercial?

A: Primarily, commercial.

Q: However, do you do residential?

A: Incidentally.

Q: All right, sir. And this piece of property is residential?

A: Well, I consider it a commercial tract of land.

Q: Why is that?

A: Because it would be eligible for -- the highest and best use was for residential development.

Q: And so, does that fit into your ---

MR. BELLAMY: Your Honor ---

THE COURT: Yes, sir, Mr. Bellamy?

MR. BELLAMY: That is not consistent with R-1 zoning. That is not what this ---

THE COURT: All right, sir. Mr. Bellamy I appreciate that and be glad for you to point that out in cross examination. Continue, Mr. McCutcheon.

BY MR. MCCUTCHEON:

Q: Mr. Haskell, you appraised this property, did you not, as R-1 residential?

A: Yes, sir.

Q: And you did that on three occasions?

A: Yes, sir.

Q: All right, sir. And had you done or have you done appraisals like this before?

A: Yes, sir, I have.

Q: How many times have you done appraisals on property that's -- are designated R-1?

A: Hundreds of times.

Q: All right, sir. Have you done this for the Highway Department?

A: Yes, sir.

Q: Have you done them for individual landowners?

A: Yes, sir.

Q: Have you done them for individual landowners against the DOT?
A: Rarely.
Q: But you have?
A: I have.
Q: Most of the time you do it for the DOT?
A: That's correct.
Q: And you get paid to do that; is that correct?
A: That's correct.
Q: And to my understanding is what you do is you submit a bid for properties from the DOT; is that correct?
A: That's correct.
Q: And sometimes they accept your bid and sometimes they don't?
A: That's right, it's a competitive bid process.
Q: All right. And in this particular case, Mr. Haskell, you were actually retained by me ---
A: That is correct.
Q: Were you not?
A: Yes, sir.
Q: You didn't submit a bid to the DOT to appraise this piece of property?
A: No, sir, I was contracted directly by you.
Q: And as a result of that, you undertook to appraise the property?

A: Yes, sir.

MR. MCCUTCHEON: Your Honor, I would offer Mr. Haskell as an expert in the field of appraisal.

THE COURT: Do you wish to voir dire their witness or challenge his qualifications?

MR. BELLAMY: No objections, Your Honor.

THE COURT: He's qualified to give his opinion. You may continue, Mr. McCutcheon.

BY MR. MCCUTCHEON:

Q: Now, when did I retain you, Mr. Haskell, to appraise this piece of property?

A: Well, initially, it was back in 2012.

Q: 2012?

A: Yes, sir.

Q: And what did I ask you to do?

A: You asked me to appraise the property subject to the proposed right-of-way?

Q: All right. And what documents did I provide to you, Mr. Haskell?

A: Highway plans of the project.

Q: Anything else?

A: Not that I recall at this time.

Q: All right. Was there any information that I did not provide to you that you needed to in order to accomplish a task ---

A: No, sir.
Q: --- in this case? Now, once you got the highway plans, Mr. Haskell, what is the first thing that you did?
A: I came down and inspected the property in order to determine our highest and best use and what sales we would research in order to estimate the value of the property.
Q: And when did you inspect the property, sir.
A: It was in December 2012.
Q: And what was the status of the construction on the property at the time you inspected it?
A: The roadway was built up on the opposite side of the road and there had been some engineering work on the tract. A borrow pit had been dug, just initial development had begun on it.
Q: I want to ask you, sir, did -- at the time of condemnation in this case, which is December 15th of 2009, you are required are you not to appraise the property as of that date?
A: That's correct.
Q: All right, sir. And on that date there was no borrow pit?
A: No, sir, and there was not.
Q: And in your first appraisal, you appraised the property and there was no borrow pit or any other kind of put on it?
A: No, sir.

MR. BELLAMY: Your Honor ---

THE COURT: Mr. McCutcheon?

MR. BELLAMY: Can we approach the bench?

THE COURT: Yes, sir.

(REPORTER'S NOTE: A bench conference was held off the record in the presence of but out of hearing of the Jury.)

THE COURT: All right. Ladies and gentlemen, if there is any mention by the witness as to the borrow pit it is irrelevant to this case, it is not part of this case and you are not listen to any testimony about it. Thank you. Continue on.

BY MR. MCCUTCHEON:

Q: You did an appraisal, did you not, sir?

A: That's correct.

Q: And what steps do you take -- now, you've already told me that you visited the tract?

A: Oh, we visited the tract and did research in order to establish what we felt was the highest and best use of the property and then began to gather comparable information.

Q: And that highest and best use was R-1 residential?

A: That's correct.

Q: And you appraised it on that basis?

A: Yes, sir.

Q: Now, how do you go about doing or arriving at your estimation of just compensation on the value of the particular

land?

A: Well, we researched sales in the area, came down to the courthouse and talked to various realtors in the area in order to select our sales. Our selection criteria, we attempted to stay west of 544 and Dick Pond Road and felt like that was most indicative of the development activity in the subject area. We were able to locate four sales west of 544. They were -- all four were south of the Intracoastal Waterway and those were the sales that we relied on in order to establish the market value with the subject prior to the roadway acquisition.

Q: Now, Mr. Haskell, there are -- we've heard testimony in the courtroom about the various appraisal approaches that you can take in arriving at value.

A: Yes, sir.

Q: Those being the -- could you tell me what those three are?

A: That would be the cost approach, the sales comparison approach and the income approach.

Q: And what is the sales comparison approach?

A: The sales comparison approach would be the method of using other sales we thought were similar to the subject in making adjustments to those comparables in order to make them similar.

Q: And the cost approach?

A: Cost approach would be a cost analysis, which is really not applicable in a tract of vacant land.
Q: And that was the same thing -- did you do it the same way that Mr. Jayroe did?
A: That's correct.
Q: All right. And the other one would be the income approach?
A: That's right and this wasn't applicable. It wasn't an income producing property and didn't feel like it would be bought or sold based on any income potential at that time.
Q: All right. And how do you go about establishing your comparable sales?
A: We tried to find sales that were similar in utility as the subject. Basically, it was somewhere in the market for a 31-acre tract of land. If they were in the market, what other tracts would they look at in that market, what would they -- if you were a realtor and you were going to show somebody a tract of land, what other tracts of land would you possibly show him in addition to the subject.
Q: And on occasions do you sometime, once you determine what those comparable sales are, do you have to make certain adjustments to the comparables ---
A: Yes, you do.
Q: You need to let me finish.
A: Yes, sir.

Q: And what are those adjustments?
A: Oh, we made adjustments for the time of the sale.
Q: What are they generally?
A: Oh, market conditions, location, size, topography, shape and, in this case, wetlands issues.
Q: Were there any wetlands on this property?
A: Yes, sir.
Q: How many acres of wetlands?
A: Let's see. We did it based on a percentage. We estimated it -- we estimated the subject had fourteen percent was in wetlands.
Q: And fourteen percent would be how many acres out of 131.4?
A: Twenty, roughly.
Q: Approximately, twenty acres?
A: Yes, sir.
Q: All right. And you have indicated to us, Mr. Haskell, that you selected four comparable sales; is that correct?
A: That's correct.
Q: And it's kind of hard to see, but I would like for you to come down and show the Jury on this document where the comparable sales are. Now, you need to talk to that box right there.
A: Okay. These are the four sales that we used. These two sales here both are located on Enterprise Road. This is the

subject property. Intracoastal Waterway. These sales, 1 and 4 are located each with frontage on the river directly across from the subject. Sale 2 was on Butler Road, which was off of the Waterway. And Sale 3 was located to the furtherance way down on St. Peter's Church Road, right down in this area.

Q: How many of those were on the Waterway?

A: We had to. Those properties on Enterprise were on the Waterway, and felt like they were the best indicators to value since they were directly across from the subject.

Q: All right. Now, show me again where the subject property is.

A: Oh, the subject property is right here, with -- this shows the proposed roadway coming across and then we have these two sales on Enterprise, this one down on Butler and this one down on St. Peter's Church Road down here.

Q: All right, sir. And which of those two, if you did, you consider to be -- now you got me ---

A: The two that were most comparable would be 1 and 4 because they were relocated basically on the river in the same neighborhood. Both of them, Sale 1 had 52 acres, it was smaller than the subject, and Sale 4 had 79 which was also smaller but more similar in size.

Q: Now, once you determine your comparable sales, Mr. Haskell, what is the next step that you undertake?

A: Oh, we adjusted the sales for several issues. The first

would be ---
Q: Let's take them one at the time.
A: Okay.
Q: This column right here is the subject property?
A: Yes, sir. This is the subject property. It shows 131.4 acres of the zoning R-1 at fourteen percent in wetlands, which was estimated, all utilities and whether it had Intracoastal frontage. And on this we have -- the subject did -- excuse me -- and then 1 and 4 also did and these two didn't. So, we are basically setting up a graph so we can tell what is similar and what is different.
Q: All right. The first comparable that you used, at the top it says, it's Number 1, fee simple -- we've heard that talked about -- a arm's-length property right and then it's got financing. What do you mean when you say market?
A: Oh, it means that it was sold at the market. There was no financing advantage that may have been associated with the property such as owner financing, if someone owner financed it at a below market rate, that would have affected the value of the sale.
Q: It also says arm's-length and I think that's pretty explanatory. That means you and I dealing without any -- you're not the son, you're not -- that kind of thing.
A: Willing buyer, willing seller.
Q: In the end it has the sale price which is $4,200,000, is

that correct?
A: That's correct.
Q: Enterprise Road, you have told us where that is, right here?
A: Yes, sir.
Q: Right here. And it's also on the Intracoastal Waterway?
A: Yes, sir, on the Waterway.
Q: All right. And then you come up with -- you have the size, which is 52.835 acres; is that correct?
A: That's correct.
Q: The shape is regular?
A: Yes, sir.
Q: Level to gently sloping?
A: Most properties are in this area.
Q: Is that similar to the subject?
A: Yes, sir.
Q: You've got CFA on there, what does that mean?
A: That is a general rural ---
Q: You appraised it is R-1?
A: Yes, sir.
Q: Agriculture -- R-1, residential.
A: Yes, sir. Yeah, CFA could be rezoned, it's all one variable. There's really no advantage or disadvantage to ---
Q: So, basically, they are the same.
All right. And then you put down here percentage of

wetlands and you have five percent?
A: Yes, sir.
Q: All right. What did you -- what does that five percent do?
A: Well, I compare the five percent of wetlands on Sale 1 to the fourteen percent of the subject only having five percent would be considered to be superior.
Q: Utilities, it had all the utilities; is that correct?
A: Yes, sir.
Q: Just like the subject?
A: Yes, sir.
Q: And it had Intracoastal frontage, right?
A: That's correct.
Q: And then you undertake -- the next line says that you make certain adjustments?
A: That's correct.
Q: All right. And so -- and I think I understand but what does it mean when you have a minus percentage?
A: Oh, the minus percent on the subject would imply that it was superior, so you would adjust it down to the subject. All of these are adjusted to the subject. So, in this case, we talked about previously on size, we talked about a smaller tract of land selling for a higher price per acre than a larger tract of land because you would have more people that are able to afford it. You would have more competition, which

would drive the price up.
Q: All right. So, you did it ---
A: So, we've adjusted this one down for size 52 acres versus 131.
Q: All right. And then for ---
A: Percentage ---
Q: Percentage of wetlands?
A: We adjusted it down ten percent sense this was superior and only had five percent and we had fourteen percent, so somebody would pay less for this that they would for a higher percent. We had to negative adjustments on that, no adjustment for utilities or Intracoastal frontage. So, we only had two adjustments on this one minus twenty-five percent and then came up with an adjusted sales price $66,303 per acre.
Q: All right. Now, what about -- rather than going through each one of these numbers, what adjustments -- first of all, where is Number 2 located? If you could, show us one more time.
A: Number 2 is located right here which is off of -- which is off of the Waterway, so we don't think it's as good. We adjusted it up twenty percent for location. It is ---
Q: Meaning that the subject is superior?
A: It meaning -- yeah, that's right, so we adjusted this up since it's not as good as the subject. The size, this is a

larger piece of land, so it would sell for less per acre so we adjusted it up there. Percentage of wetlands, it had a higher percentage of wetlands so it was inferior and we adjusted that up. Utilities ---

Q: Actually, you've got a totle of ninety percent, so really that's not a comparable.

A: No, it was in the neighborhood. Like I say, we tried to stay west of this corridor right here, you can see how much more intensive development is as we go up over toward 501 to 544, so basically was tried to stay basically on this side of 544. There wasn't a whole lot to choose from.

Q: All right. Now, let's skip to Number 4. And correct me, you know -- once again, I want to make sure I understand. 1 and 4 are the two that you feel to be closest to the subject?

A: That's correct.

Q: And did you put more weight on those two than you did on the two in the middle?

A: Yes, sir.

Q: And in regards to this one, you have a minus ten percent which means that the subject is superior?

A: It means the subject is larger. This is a smaller sale, so higher price break or adjusted that down. It did have a higher percentage of wetlands, so we adjusted it up. Basically, adjustments netted out $32,963 per acre.

Q: And what do you do next? Down here it said you have a

low of 32?
A: That's correct, which was Sale 4.
Q: You have a high of ---
A: 66, which was Sale 1. So, the lowest and highest sale, which also had the least amount of adjustments, where the two located right across the river.
Q: And then you have a mean and then you have a median?
A: You know, a mean average, which is this the average of the four and the median which would be ---
Q: Based on that, Mr. Haskell, how do you determine what a -- what per acre value you place on the property?
A: Well, it becomes my opinion.
Q: All right.
A: It is my opinion that a reasonable price of a willing buyer, willing seller, would be $40,000 per acre based on the sales, the highest sale, the low sale with these two basically offering some type of support for the activity in the area.
Q: Okay.
A: The lack of sales in the area also tells you something, not a whole lot of activity, a whole lot of property selling.
Q: Have a seat back up there for just a second. And based on your opinion and findings of $40,000 an acre, what was the before value that you arrived at for the entire tract?
A: $5,256,000.
Q: 5,256,000?

A: That's correct.
Q: And that would've been your opinion as to the value of the entire tract as of December 15, 2009.
A: That's right. Without a proposed road, just as it sat.
Q: Now, what -- the next step, you also have to -- and I know this sounds kind of funky but you also have to determine as of that same date the after value?
A: That's correct.
Q: That's correct. So, in other words you've got to determine both of them as of that one particular day?
A: Yes, sir.
Q: Is that correct?
A: Yes, sir.
Q: Now, how do you go about doing that, Mr. Haskell?
A: Looked at the plans and of where the roadway would be situated on the property, the elevation of the bridge and how it may have an effect on the site. In other words, what would be the highest and best use of the property after the bridge was actually in place.
Q: All right. And the highest and best use in your opinion was the same?
A: It remains the same, yes, sir.
Q: R1, residential?
A: That's correct.
Q: Now, the -- what is the definition, Mr. Haskell, of just

compensation to a landowner in a condemnation case?
A: It would be the value, diminution in value resulting from the road project or the acquisition.
Q: All right. And then, stated another way would it mean the difference in the value before as opposed to the difference after ---
A: Yes, sir.
Q: --- taking into consideration any damages to the remainder or benefits to the remainder?
A: That's correct.
Q: Now, when you did your initial appraisal, Mr. Haskell, did you consider benefits or damages?
A: I did.
Q: All right. And what, in your opinion, did you find?
A: Initially, we didn't consider -- find any benefits or any damages at that time.
Q: Okay, and why?
A: We did not have any information concerning noise other than speculation. We couldn't find any evidence that noise was an issue on project.
Q: Since -- that has changed since then, has it not?
A: Yes, sir.
Q: Will talk about that in a minute; is that correct?
A: That's correct.
Q: And at the time, you were not furnished with a noise

study?
A: That is correct.
Q: But at some point in time, did I send you a noise study?
A: Yes, sir.
Q: And did you utilize that noise study in preparing and amended appraisal?
A: Yes, sir.
Q: Did you use the same comparable sales in the amended appraisal that you did in the original appraisal?
A: I used the same sales in the before situation and the same sales in the after situation the exception of the 19.7 acres which were found to be within the high decibel area.
Q: Why did you say it that way?
A: The report indicated that 19.7 acres or affected as far as the noise levels, so we felt like that piece of property, the 19.7 acres had a different highest and best use. We did not feel like it had the same development potential that the remainder of the land did.
Q: Okay. What -- did you use the same comps or did you use different comps?
A: Oh, we used different comps. We felt like after the acquisition, with the noise level, it would probably have a highest and best use of some type of recreational use. So, we researched sales, recreational land, basically land that didn't have -- development a potential, one of them had an

easement on it and that was about twenty-five percent of the value. We were $40,000 per acre on the unaffected land and reduced the 19.7 acres to $10,000 per acre because of its loss of development potential. We still felt like it had some use, it was green space, playground, whatever, a storage area on site.

Q: What number did you arrive at -- and I want to make -- before you go there, let's simply go to the end one. Let's go to the last one. That's eleven, isn't that correct?

A: Yes, sir.

Q: Where you calculated the numbers based on the information that you've just told us about; is that correct?

A: That's correct.

Q: Now, the highest and best use, these numbers in this appraisal was done very recently; is that correct?

A: That's right. It was updated in October.

Q: All right. And it was done, it was done as a result of the information you got the noise study?

A: That's correct.

Q: And then where it says there were 19.7 acres impacted?

A: That's correct.

Q: All right. And how did you arrive at your numbers in regards to that?

A: We took the initial size of the property, which was 131.4 acres, and we deducted two numbers from that. We deducted the

19.7 acres out which is the area we felt was affected by the noise and we also took out the acquisition area. So, we ended up with a net area, which we feel was unaffected of 101.52 acres, used the same $40,000 per acre number which we used in the before. We damaged the 19.7, we damaged it by seventy-five percent, which is 197,000. The acquisition area is left out, so it's basically a zero value and this gives us a value of the site after the acquisition, including damages of $4,258,000, before ---

Q: Now, explain to us what these numbers are now at the bottom of the sheet.

A: These numbers represent the before value of the entire tract $40,000 per acre assuming that the road is not there or planned based on these comparable sales. Then we take out -- we net out the damaged area of the acquisition area and come up with 101.52 net unaffected area -- acreage, damaged acres and add these up and this gives us an after value. The difference between the before value in the after value gives a number of just compensation of $998,000.

Q: All right, sir. And based on your opinion, sir, as a real estate appraiser, this in your opinion is the number that is due to the Landowner by way of just compensation?

A: That's correct.

MR. MCCUTCHEON: Bear with me just one moment, Your Honor.

THE COURT: Yes, sir.

Q: I have no further questions. Would you answer any questions the Landowner may have?

A: Yes, sir.

THE COURT: All right. Cross examination, gentlemen.

MR. BELLAMY: Thank you, he Your Honor.

CROSS EXAMINATION OF HARRISON CORBIN HASKELL BY MR. BELLAMY:

Q: Good afternoon, Mr. Haskell.

A: Mr. Bellamy, good afternoon.

Q: Mr. Haskell and I had the privilege, a year or so ago, of dealing with brown storks in a condemnation case.

A: Although on the same side at that time.

Q: Let me ask you, you are familiar with Section 28-2370 which fixes the date of the take under the South Carolina Code?

A: Yes, sir.

Q: All right, sir. And the code provides that that date, that's when the condemnation notice is filed downstairs, determines just compensation either for the before value and the after value?

A: Yes, sir.

Q: We don't dispute that, do we?

A: No, sir.

Q: And you are also familiar with the provisions of 28-270 of our code that requires that before the DOT can start a

condemnation action, they shall cause the property to be appraised to determine the amount that would constitute just compensation for it's taking and shall make the appraisal available to the Landowner. You weren't involved with that process, were you, sir?

A: No, sir.

Q: All right, sir. And you don't even know whether the Landowner got a copy of the appraisal, do you, sir?

A: No, sir. My client was Mr. McCutcheon.

Q: All right, sir. But you do know that the DOT told the Landowner that compensation was zero; you know that?

A: I'm aware that there was a previous appraisal done by someone else.

Q: All right. You understood my question?

A: Uh-huh, yes, sir.

Q: That they told the Landowner, we owe you zero; are you aware of that?

A: Yes, sir.

Q: All right, sir. Now, you get involved by -- hired by Mr. McCutcheon?

A: Yes, sir.

Q: Mr. Ratchford preceded you?

A: I believe that's correct.

Q: He's not here today?

A: No, sir.

Q: Now, Mr. McCutcheon hired you to do an appraisal that should've been given to the Landowner on December 15, 2009. You kind of came in late but you were trying to do your job, weren't you?
A: 2012.
Q: Yes, sir. So, three years later you come on the scene and you do an appraisal that basically says that you looked at it, you evaluated it, use the cops that you told Mr. McCutcheon about. And you came up with just compensation at $407,000; am I right on that?
A: That's correct.
Q: And that would be $40,000 an acre for 10.1 acres, correct?
A: That's right, the acquisition area.
Q: And not one dime did you assess as damages to the remainder?
A: No, sir.
Q: All right, sir. That appraisal was given to the Landowner; you knew that, didn't you?
A: That's correct.
Q: All right. And in that appraisal, you used a sale over on Enterprise Road, which both you and Mr. Jayroe used?
A: That's correct.
Q: And that was the piece that sold for $79,000 and change in the before?

A: That's correct.
Q: Now, after that, I took your deposition to determine how you arrived at your number of $407,000, you recall that, don't you?
A: Yes, sir.
Q: Excuse me. And you told me in your deposition that you had determined, if you came to trial, that you would not assess any damages to the remainder of the property. You told me that under oath, didn't you?
A: That's correct.
Q: Then you told me that you didn't look at the environmental impact statement.
A: That's correct.
Q: And then you told me that you didn't consider the severance of this tract by the bridge into two tracts as not constituting any damages?
A: I don't feel that it is. I still don't feel that it is.
Q: All right, sir. But that's what you told me?
A: That's correct.
Q: All right, sir. Okay. Now, you also told me that the height of the bridge didn't have any concern for you, did you not?
A: I believe that was correct.
Q: All right, sir. Okay. I'll read it back to you. And you told me told me that the light emanating from the bridge

didn't have any effect as you felt.
A: No, sir, I don't.
Q: All right, sir. And you told me, listen to this, that noise wasn't going to have any effect on this tract of land, didn't you?
A: That's correct.
Q: You didn't look at the environmental impact statement, where that information was available to you if you wanted it, did you?
A: It is but I don't really -- no, I didn't look at it.
Q: All right, sir. And when I asked you what the speed limit on the road was, did you know how many lanes it was? You told me it was for when it was really six, didn't you? Didn't you?
A: I believe that's correct.
Q: All right, sir. Okay.
Now, you didn't ask anybody when you got hired at the DOT to give you any assistance, did you? You did this appraisal on your own?
A: That's correct.
Q: All right, sir. And they did not offer any assistance to you, did they?
A: No, sir, didn't ask for it.
Q: Now, well, then you got to this appraisal and you're at the 407 and as Mr. McCutcheon talk to you, you were hired by

the law your for the DOT and not the DOT?
A: That's correct.
Q: All right, sir. Did he tell you that he was concerned that the DOT had not dealt with the noise and he needed a noise expert? Did he tell you that?
A: Is that a question?
Q: Yes, sir.
A: I'm sorry. Repeat that.
Q: Did he tell you that the DOT -- let me see if I can rephrase it. Did he tell you that the DOT didn't tell him to hire a noise expert?
A: Not my area.
Q: Okay. But you did in fact get the report from Mr. Wilson, did you not?
A: I did.
Q: And as a result of getting the report from Mr. Wilson, you changed your mind and said, now, there is some noise damages to this tract of land, correct?
A: That's correct, based on his study.
Q: Yes, sir. And I notice when I read it, it wasn't anything you did, it was something that Mr. McCutcheon sent you and ask you to consider it. Isn't it your job as the appraiser to assemble the before and after value and assess the damages?
A: Yes, sir.

Q: So, when you got it, did you go out and calculate how Mr. Wilson got 19.75 acres from a bridge -- do you know how long it expands across?
A: No, sir, I relied on his expertise.
Q: You relied on what he did?
A: That's correct.
Q: No independent investigation on your part, period?
A: Yeah, I'm not qualified.
Q: All right, sir. Then, what you did, as I understand, when you got the sound study, the only thing you did was amend your report to reflect the damages on 19.75 acres.
A: That is correct.
Q: Now, what you did, as I understand it, you had your price of $40,000 an acre in the before and you damaged the 19-and-a-fraction acres down to $10,000; am I right on that?
A: Yes, sir.
Q: That would be -- I'm no mathematician -- that would be seventy-five percent damages, wouldn't it?
A: That's correct, based on the change in highest and best use.
Q: And when you looked at the report for Mr. Wilson, it basically said -- how far out from the road, from the right-of-way of the road, did the report go for the 61 acres, the 19.75 acres were talking about? Was it 100 feet or 200 feet?
A: I'm not sure how far it is.

Q: Well, isn't that important?
A: No, sir. I mean, the area is either affected or it's not.
Q: Well, if you go out 200 feet and the decibel level, he said is 61 decibels, which for the purpose of noise, not building a barricade but for just noise on this property, when you go to 201 feet, do the decibel levels drop from 61 to 60?
A: It drops below the threshold. I'm not sure exactly what it drops to.
Q: But that's not your field of expertise?
A: No, sir.
Q: All you did was say 19.75 and you don't know why he said 19.75 acres, do you?
A: Well, those were the areas within the monitors that exceeded the ---
Q: But you don't how it got there and you didn't ask him to prove to you that there weren't more?
A: Right. I had the study. I assumed -- he's an expert in what he's doing I'm not going to second-guess him.
Q: I understand, Mr. Haskell. And then, in effect, you said you didn't give any effect to 35,000 cars a day according to the DOT expert coming across a bridge?
A: Well, that's included in the noise.
Q: All right, sir. Well, there isn't any question that on December 9 -- December 9 in '09 -- December 15, '09, this was

131-acre tract in tact, was it not?
A: That's correct.
Q: All right, sir. And on the same day, the Landowner, this lender, these mom and pops that lent this money on this piece, woke up and found out that there was going to be a bridge seventy feet up in the air, six lanes of traffic doing sixty miles an hour. Is it kind of like -- did you hear Mr. Powell's deal about the sawmill next to your house when you woke up one morning?
A: I don't really see it that way but ---
Q: All right, sir. I understand. And let me ask you this, you didn't consider the circuity of travel, did you?
A: I don't understand the ---
Q: I asked in your deposition, you said that you didn't feel that was an issue.
A: I don't think it is an issue.
Q: All right, sir. And then did you meet with Mr. Wilson after you got in his report?
A: No, sir.
Q: Did you call them on the phone?
A: No, sir.
Q: Did you email you?
A: No, sir. I relied on him as an expert.
Q: All right, sir.
A: Same as I would an engineer or whoever drew the plans.

Q: Were you familiar with the credibility of his company?
A: No, sir.
Q: All right, sir. So what we have is your opinion that this tract of land on December 9 -- December 15th of 2009, that if you gave the Landowner $998,000 you would have justly compensated him?
A: Yes, sir, I do.
Q: The bridge ain't gonna go away, is it, sir?
A: No, sir.
Q: And it'll be there tomorrow, the next day and ---
A: Well, hopefully.
Q: All right, sir. If you'll give me just a minute, I think I'm about done.
THE COURT: Yes, sir.
Q: On your comps that you used, you, you and Mr. Jayroe used that Enterprise comp, did you not?
A: That's correct.
Q: And I'm looking to see your adjustment chart on that. And you came up with $79,493. When you did your time adjustments to it, your number actually got above $80,000 an acre, didn't you, sir?
A: That's correct.
Q: All right, sir. Your number in the before is $40,000 an acre and Mr. Jayroe's number is 70,000. In fact, your adjustment on the Enterprise tract gave a higher value to Mr.

Jayroe.
A: I believe it did.
Q: All right, sir. And Mr. Jayroe used -- all his comps were on the Intercoastal Waterway. Only two of yours were, weren't they?
A: That's right. I didn't feel like it was appropriate to go between 544 and 501 in a highly developed area. I really didn't see how those are comparable to our neighborhood. I think our realtor, like if someone was coming in looking for 100 acres, that's a totally different market. You're talking you know under $100,000 an acre down in our area and you're going to drive him up and showed him 10, $15,000,000 properties. I just didn't think that was appropriate.
Q: You didn't think that was appropriate ---
A: No, sir.
Q: And as a result, you only used to comps on the Waterway as opposed to six that Mr. Jayroe had.
A: But four in the neighborhood as opposed to just one.
Q: Yes, sir. And I think that's all I have. Thank you very much.

MR. MCCUTCHEON: I just have a couple of questions.

THE COURT: Yes, sir.

REDIRECT EXAMINATION OF HARRISON CORBIN HASKALL BY MR. MCCUTCHEON:

Q: Mr. Haskell, is it unusual for lawyers in condemnation

cases to how your services?
A: No, sir.
Q: Is there anything clandestine about that?
A: No, sir.
Q: All right, sir. Excuse me just one minute, Judge.
THE COURT: All right, sir.
Q: And one other question, sir. Is it your understanding that in a highway condemnation case, circuity of travel is not an element of damage?
A: Yes, sir.
Q: Thank you. I have nothing further, Your Honor.
THE COURT: All right, sir, you may step down.
A: Thank you.
THE COURT: All right, Mr. McCutcheon, any further witnesses on behalf of the Department?
MR. MCCUTCHEON: No, sir.
THE COURT: And Mr. Bellamy and Mr. Shelton, any reply testimony?
MR. BELLAMY: No thank you, Your Honor.
MR. SHELTON: No thank you Your Honor.
BY THE COURT:
THE COURT: All right, sir. All right. Ladies and gentlemen, that is the testimony and evidence that you will receive this case to make your decision. Obviously, that does not end this case. Where we are now is that will have the

closing arguments of the attorneys, the charge on the law, the law that you must use to apply to the facts and evidence you find to be true in this case and then, based upon those two things, the facts and the evidence you find to be true and the law as I give to you, you will arrive at the just compensation to be paid to the Landowner in this particular case. Now, as you might expect, that will take a little bit of time to accomplish, so we're not gonna do that tonight because once I give the case to you and we start that process, it's yours until you reach a determination, so we're not going to keep you here all night to do that. So, I'm going to send you home. There are some of the matters of law that we have to talk about with the attorneys any way and you'de be sitting in the jury room waiting on that anyway. So, we'll cover that so we'll be ready to go with the closing arguments and charge on the law in the morning.

All right. So, I would like for y'all to be back tomorrow morning at 9 o'clock. The Clerk's office, again, will have something for you in the jury room. It'll be different than what you had today. I think you might like it. But again, you know, if you're late I expect that this one probably will be all gone by the time you get here. So, anyway, if y'all will assemble downstairs when the Bailiff tells you to assemble. Remember, don't talk about the case, don't allow anybody to talk to you about it. You are not

researchers, you're not investigators. You decide the case solely and completely on the facts and evidence you hear in the courtroom and from no other source.

Leave your pads and pens and I see you back tomorrow morning. Thank you very much.

(REPORTER'S NOTE: Jury exits courtroom and is excused for the day. The following takes place outside the presence of the Jury.)

THE COURT: All right. I'm not talking about the charge but are there any matters of law of any kind from the Land?

MR. BELLAMY: None, Your Honor.

THE COURT: From the Department?

MR. MCCUTCHEON: No, sir, Your Honor. I would just like to ask that both Mr. Wilson and Mr. Haskell be excused as witnesses.

THE COURT: Any objection to that gentleman?

MR. BELLAMY: No, Your Honor.

THE COURT: All right, gentlemen, you are released from your subpoena's to go back to your regular activities. Thank you.

All right. So, let's talk, first, about the viewing of the property. Now, Mr. Bellamy and Mr. Shelton, y'all ask about a boat ride, correct?

MR. SHELTON: We did ask.

THE COURT: Y'all know it's going down to 26 or 25

tonight, right?

MR. SHELTON: We were just talking about that.

THE COURT: And if we stick these jurors on a boat, they gonna catch pneumonia and they gonna all sue the County.

MR. BELLAMY: That's not ---

THE COURT: Well, we're not gonna do that. All right. My question to you though is, going out there, having the jurors go out to the property -- all right. So, if they go out there, is the property accessible so that there is some way, even if it's a dirt road, or some way to get to the -- view the property on the waterway side?

MR. SHELTON: No, Your Honor. That's why we were asking about the boat.

THE COURT: How about from the other side?

MR. SHELTON: Yeah, on Peachtree Road there is a drive, is just north of where the construction is taking place. If they stop there, they could get out ---

THE COURT: And look across the waterway to the property ---

MR. SHELTON: No. In order to do that, they would have to walk and it's undeveloped, it's wooded. I have ruined a pair of shoes out there.

THE COURT: So, they can't do that. All right. So, there's no way for them to get to the Waterway and look at the property?

MR. SHELTON: No, Your Honor.

THE COURT: All right.

MR. SHELTON: I mean, they could if they were in a four-wheel-drive vehicle.

THE COURT: Okay.

MR. SHELTON: And there's -- it's wide enough that you could get down there but not in one of the Sheriff vans, I'm afraid.

THE COURT: And so there's no way into the DOT access where the bridge is going to be built for them to go down some unpaved road to look at it?

MR. SHELTON: That construction area is less easily traversable than the rest of the tract right now.

THE COURT: Okay. All right. So, what can they see?

MR. SHELTON: They will be able to see, if they're not gonna go by boat, they'll be able to see a vacant tract of land and that north drive.

THE COURT: Okay.

MR. SHELTON: Then, they'll be able to drive Peachtree down beyond where the construction is currently taking place and see heavily wooded tract of land where there is a church where they could turn around down there but that's it.

THE COURT: All right. Do you want them to do that?

MR. SHELTON: Yes, Your Honor.

THE COURT: Any objection to that, Mr. McCutcheon?

MR. MCCUTCHEON: No, sir.

THE COURT: All right. So, gentlemen, do you want them to do that before we do the closing arguments and the charge on the law on or after the closing arguments and the charge?

MR. MCCUTCHEON: Before, Your Honor.

MR. BELLAMY: I agree with Jack.

THE COURT: All right. Do it before?

MR. MCCUTCHEON: You agree with me?

MR. BELLAMY: Yeah.

MR. SHELTON: And that one was on the record.

MR. MCCUTCHEON: Get that on the record.

THE COURT: I'm sure Dixie did. All right. When they get here and they're assembled here and they eat up all the doughnuts from the Trestle, then we'll have the Sheriff's office transport them out to that area. Now, how is the Sheriff's office gonna know where to go?

MR. MCCUTCHEON: We can agree on that, Your Honor.

MR. SHELTON: We typically just coordinat it with the Sheriff.

THE COURT: All right. So, Madame Clerk, who do we need to communicate with? Wade, can you communicate with them about we're going to need, you know, a couple of vans.

DEPUTY: I'll be glad to check with my supervisor.

THE COURT: Why don't you -- if you need to, call them and do that. Why don't you do it right now and tell them

we're going to the edge transport the Jury to the site. If he needs to come on in, he can come on in.

All right. While they are doing that then, let's talk about the charge. What I have put together and y'all can tell me what you'd like to add or delete or change in some way. I told you I would tell them something about note taking. And basically, what I told them before, I'll just reiterate that. Now, I'll talk to them about the things that we normally talk to them about, the credibility and believability of witnesses, what their job is, expert witnesses, that sort of thing. We'll talk to them what we always do in any case.

Now, in this one I will give them some basic charge that the Department of Transportation is required by law to construct and maintain a system of roadways and highways in the state and its empowered to condemn land for these highway purposes and that, though the Department of Transportation has that right and duty to condemn the property, it's also true that the Landowner is to be properly compensated for the taking or the condemnation of the property.

Now, with that, we will talk to them about and define to them just compensation, fair market value, highest and best use, basically just compensation very briefly being the full equivalent and money to be exchanged for the property, taken so that the owner of the property, after having received the money shall be in as good a position as they were before the