

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Case No. 2013-CP-07-01341

Appeal Case No. 2017-001736

RECEIVED
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SC Court of Appeals

Road, LLC and Pinckney Point, LLC,

Of whom Road, LLC is the..... Appellant,

v.

Beaufort County, a political subdivision of the State of South Carolina,
..... Respondent.

RECORD ON APPEAL
VOLUME II of V

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INDEX

Page

ORDERS

Order of July 18, 2017	1
Form 4 Order of August 12, 2015	16
Form 4 Order of July 7, 2015	18
Order of January 31, 2014	20
Voluntary Dismissal dated July 31, 2013	21

PLEADINGS

Complaint (without exhibits)	22
Answer	33
Amended Complaint	41
Exhibit A Settlement Agmt.	55
Exhibit B Limited Warranty Deed	106
Exhibit C Quit Claim Deed	112
Exhibit D Access Easement Agmt.	116
Exhibit E Consent Order	134
Exhibit F Purchase Agmt.	138
Answer to Amended Complaint	155

MOTIONS

Motion to Dismiss dated September 25, 2013	164
Exhibit A Deed ERP to County	169
Exhibit B Voluntary Dismissal	179
County Memorandum in Support of Motion to Dismiss dated January 24, 2014	180
Exhibit A Access Easement Agmt.	193
Exhibit B Settlement Agmt.	211
Exhibit C Consent Order	222
County Motion for Summary Judgment dated August 27, 2014	223
Plaintiff's Motion for Partial Summary Judgment dated September, 25, 2014	226
County Amended Motion for Summary Judgment dated June 3, 2015	229
County Motion to Reconsider Order Denying Summary Judgment dated July 7, 2015	235
County Motion JNOV dated May 12, 2016	238
Hartnett Trial Testimony	249
Plaintiff's Memorandum in Opposition Motion JNOV dated May 26, 2016	282

TRANSCRIPTS

Transcript of Trial April 25, 26, 27, 28, 29 and May 2, 2016	300
Pretrial Matters, Motions, and Rulings	331
Opening Statements	427
Testimony of Taylor Bush	489
Testimony of Garrett Budds	776
Testimony of John C. Kunkel	859
Testimony of Walter J. Nester, III	1043

Testimony of Thomas Hartnett	1174
Publication of Excerpts of Deposition of Joshua Andrew Gruber	1215
Publication of Excerpts of Deposition of Gary Thomas Kubic	1224
Motion for Directed Verdict and Ruling	1253
Testimony of Hillary Angela Austin	1297
Publication of Excerpts of Deposition of John H. Irby	1320
Testimony of Joshua Andrew Gruber	1348
Testimony of Gary Thomas Kubic	1389
Motion for Directed Verdict and Rulings	1405
Charge Conference	1434
Closing Arguments	1460
Jury Charge	1534
Questions from Jury	1551
Verdict May 2, 2016	1558
Verdict Form as to Pinckney Point, LLC	1565
Verdict Form as to Road, LLC	1566

Transcript of Post-Trial Motions August 9, 2016	1567

EXHIBITS

Court's Exhibit 5 (First note from jury)	1626
Court's Exhibit 6 (Second note from jury)	1628
Plaintiffs' Exhibit 3	1629
Plaintiffs' Exhibit 7	1630
Plaintiffs' Exhibit 8	1632
Plaintiffs; Exhibit 9	1633
Plaintiffs' Exhibit 10	1634
Plaintiffs' Exhibit 11	1635
Plaintiffs' Exhibit 14	1636
Plaintiffs' Exhibit 23	1647
Plaintiffs' Exhibit 26	1649
Plaintiffs' Exhibit 28	1653
Plaintiffs' Exhibit 32	1655
Plaintiffs' Exhibit 36	1658
Plaintiffs' Exhibit 38	1664
Plaintiffs' Exhibit 46	1668
Plaintiffs' Exhibit 52	1669
Plaintiffs' Exhibit 53	1676
Plaintiffs' Exhibit 54	1680
Plaintiffs' Exhibit 55	1687
Plaintiffs' Exhibit 61	1691
Plaintiffs' Exhibit 65	1693
Plaintiffs' Exhibit 68	1695
Plaintiffs' Exhibit 74	1697
Plaintiffs' Exhibit 75	1724
Plaintiffs' Exhibit 76	1736

Plaintiffs' Exhibit 78.....	1745
Plaintiffs' Exhibit 79.....	1796
Plaintiffs' Exhibit 80.....	1847
Plaintiffs' Exhibit 81.....	1848
Plaintiffs' Exhibit 82.....	1866
Plaintiffs' Exhibit 84.....	1883
Plaintiffs' Exhibit 87.....	1892
Plaintiffs' Exhibit 88.....	1893
Plaintiffs' Exhibit 89.....	1899
Plaintiffs' Exhibit 91.....	1903
Plaintiffs' Exhibit 94.....	1933
Plaintiffs' Exhibit 97.....	1938
Plaintiffs' Exhibit 104.....	1942
Plaintiffs' Exhibit 105.....	1961
Plaintiffs' Exhibit 107.....	1967
Plaintiffs' Exhibit 109.....	1974
Plaintiffs' Exhibit 111.....	1978
Plaintiffs' Exhibit 112.....	1979
Plaintiffs' Exhibit 113.....	1980
Plaintiffs' Exhibit 114.....	1981
Plaintiffs' Exhibit 115.....	1982
Defendant's Exhibit 1.....	1983
Defendant's Exhibit 2.....	1991
Defendant's Exhibit 3.....	1994
Defendant's Exhibit 4.....	2002
Defendant's Exhibit 5.....	2042
Defendant's Exhibit 6.....	2086
Defendant's Exhibit 7.....	2090
Defendant's Exhibit 9.....	2091
Defendant's Exhibit 10.....	2092
Defendant's Exhibit 12.....	2093
Defendant's Exhibit 15.....	2097
Defendant's Exhibit 16.....	2101
Defendant's Exhibit 23.....	2102
Defendant's Exhibit 27.....	2116

OTHER

County's Proposed Order Granting JNOV	2169
Certificate of Counsel	2183

1 MADAM CLERK: Do you solemnly swear or affirm that
2 the testimony you give to the Court in this case shall
3 be the truth, so help you God?

4 TAYLOR BUSH: I do.

5 MADAM CLERK: You may be seated.

6 TAYLOR BUSH

7 DIRECT EXAMINATION BY MR. WALKER:

8 Q Good morning, Taylor.

9 A Good morning.

10 Q Where do you now live?

11 A I live at 926 Seashell Lane, Ponte Vedra Beach,
12 Florida.

13 Q Very good. And are you temporarily residing in
14 South Carolina?

15 A I also have a place in Charleston.

16 Q Where did you grow up?

17 A I grew up in Georgia.

18 Q Where?

19 A Colquitt, Georgia.

20 Q And did you go to school there?

21 A I did.

22 Q Did you go to college in Georgia?

23 A I did.

24 Q Where did you go to school?

25 A Georgia Southern, Statesboro.

1 Q And what business have you been in for the majority
2 of your adult life?

3 A I've been in the real estate development business.

4 Q All right. For approximately how long?

5 A Thirty-four years.

6 Q What aspect of the real estate development
7 business? What particular?

8 A Most aspects. Early in the career was on the
9 building side, and then, later on the development side.

10 Q And when you talk about development, are you
11 talking about -- what do you mean by that?

12 A We would buy land and develop the land into home
13 sites. And then, we would either build the homes
14 ourselves, or we would sell the home sites to a home
15 builder.

16 Q At some point, did you become affiliated with a
17 group called Stokes Land Group?

18 A I did.

19 Q When was that?

20 A Well, it's -- it's the company that I originally
21 went to work for in 1982, when I graduated from college.
22 So, it was originally Stokes & Company. And then, over
23 time, it was renamed Stokes Land Group.

24 Q What type of land development did Stokes Land Group
25 do?

1 A Our primary focus is residential land development.
2 We've done some commercial, in some cases, but primarily
3 residential, and some multi-family.

4 Q Were you involved with the purchase and the
5 development of this parcel we're talking about, Pinckney
6 Point, here in Beaufort County?

7 A I was.

8 Q And what was your role?

9 A We had -- we had expanded our company out of
10 Jacksonville, into regional markets, including North --
11 South Carolina, and Georgia, and we had partners in
12 these various markets. In the Charleston market, we had
13 two partners, Lee Barnes and his sister, Lydia Johnston.
14 And I was, I guess, a senior partner over them.

15 Q Where is Pinckney Point?

16 A It's located just off -- just near Hilton Head.

17 Q Is it in Bluffton? Is it over the island in Hilton
18 Head?

19 A No, it's in Bluffton.

20 Q How do you get there?

21 A Well, it's -- it's just off of Pinckney Colony
22 Road.

23 Q Is there more than one road to get there?

24 A Well, yes. Is it 178 or 278? 178? Highway 178.

25 Q And once you turn off of 278 --

1 A 278, sorry.

2 Q Once you turn off of 278, how far is it?

3 A It's two or three miles down to the end of the
4 road.

5 Q How large is it?

6 A 230, 40 (340) acres.

7 Q Did it interest you when you learned about it?

8 A Yeah. It was -- it was a nice piece of property,
9 and we thought it would make a good place for home
10 sites.

11 Q How did you find out about Pinckney Point?

12 A Lydia Johnston apparently met John Pinckney, who
13 lived on the property. He had lived there most of his
14 life. And she had met, I think, it was a cousin of his
15 at a Christmas party. And she -- the cousin told her
16 that -- I think it was a cousin -- that John was
17 interested in selling this property.

18 Q And at that time, what was the property used for?

19 A It had been a farm, I suppose, the entire time that
20 the Pinckneys had owned it.

21 Q I'm going to show you a photograph that's marked
22 Plaintiffs' Exhibit 114.

23 A Okay.

24 Q If you'd take a look at that. Are you familiar
25 with that property?

1 A I am. Yeah, that's the property.

2 Q And is it Pinckney Point, an aerial of Pinckney
3 Point?

4 A It is.

5 MR. WALKER: Your Honor, we would move 114 into
6 evidence. I understand, without objection.

7 THE COURT: Without objection?

8 MR. ACHURCH: No objection, your Honor.

9 THE COURT: All right. It's in evidence.

10 ITEM IDENTIFIED AS PHOTOGRAPH OF
11 AN AERIAL OF PINCKNEY POINT,
12 MARKED PLAINTIFFS' EXHIBIT NUMBER 114,
13 ADMITTED AS EVIDENCE.

14 BY MR. WALKER:

15 Q What was it, in particular, about Pinckney Point
16 that got your attention?

17 A Well, it was a good location. The natural features
18 of the property. It was largely upland. It had very
19 little wetlands.

20 Q And why would you even be looking at wetlands as a
21 --

22 A Well, wetlands are certainly an environmentally
23 protected thing. And so, this property had a lot of
24 uplands that could be developed. You can't develop
25 wetlands.

1 Q All right. And what we see that the middle of that
2 tennis racket is -- seems to be open. What was going on
3 there? Was there a farming operation when you first
4 looked at it?

5 A I don't think he was actively farming it when we
6 looked at it.

7 Q Okay.

8 A When we first looked at it.

9 Q Was there a house on the site?

10 A Yes. Yeah, he lived there, he and his wife.

11 MR. WALKER: And your Honor, would it be okay if he
12 stepped down and pointed out where the house was, where
13 the home site was?

14 THE COURT: Sure. Go ahead.

15 BY MR. WALKER:

16 A This is the area of the homestead, right there.
17 They called it the Homestead. There was a barn there, a
18 house, and other farming-type things.

19 Q Was that an attractive area on the property?

20 A It was the -- it was the premier piece of property.
21 It was the highest up on the bluff on the deep water.
22 Big beautiful oak trees, Angel Oak. It was really
23 pretty.

24 Q All right. And how did one get from Pinckney
25 Colony Road, when you come across that little isthmus

1 there, how does one -- where does the road go to get to
2 the house, Taylor?

3 A The road runs right through this wooded area, right
4 up to the house.

5 Q And what's the approximate distance from where that
6 road comes onto the property to the house?

7 A I think it was about 1,700 feet.

8 Q All right. Thank you. You can return.

9 At the time you began your discussions with the
10 owner to purchase the property, what was the owner
11 asking for the property?

12 A They were asking around fifteen million dollars for
13 the property.

14 Q Okay. Did Pinckney Point -- rather, was there a
15 contract entered for the purchase of the property?

16 A There was.

17 Q With the owner?

18 A Um-hmm.

19 MR. ACHURCH: I'm sorry. Did you say yes?

20 BY MR. WALKER:

21 A I -- there was, yes.

22 Q Thank you. You may need to speak up a little bit.

23 A Okay.

24 Q All right. And do you recall what the purchase
25 price was in that contract?

1 A It was around five million dollars.

2 Q Was there any issue that you knew about when the
3 contract was signed concerning the access to the
4 property on the unpaved portion of Pinckney Colony Road?

5 A Not at the time the contract was signed, no.

6 Q I don't know if I hit this with you, but was
7 Pinckney Colony Road paved all the way up to where the
8 property started?

9 A It was not.

10 Q Approximately how long was the unpaved portion
11 between -- and I'm talking about the distance from where
12 the pavement ended on Pinckney Colony Road and where the
13 property line to Pinckney Point started?

14 A It was about two-tenths of a mile.

15 Q Did, at some point, while your contract was
16 pending, a dispute arise about that access?

17 A It did.

18 Q What happened?

19 A We, during our -- when we put a property under
20 contract, we do what we call a due diligence. We'll --
21 we'll go out and do a lot of research to determine how
22 best to develop the property. How many density units
23 are allowed under the zoning, whether or not we feel
24 like it needs to be re-zoned. We'll look at access.
25 We'll look at utilities, all of those type of things.

1 And so, we -- we looked carefully at the access, and we
2 determined -- we had a lot of people look at it -- we
3 had attorneys look at the access. We had --

4 MR. ACHURCH: Your Honor, I'm going to object.

5 THE COURT: Okay. On hearsay.

6 MR. ACHURCH: Yes, ma'am.

7 THE COURT: Okay.

8 MR. WALKER: He's not saying what the attorneys
9 found. He's just saying he had the attorneys look at
10 it.

11 THE COURT: Attorneys look.

12 BY MR. WALKER:

13 Q All right. Who did you rely on in terms of getting
14 your information about the access?

15 A Well, we would -- access is a -- is a legal issue,
16 so we did rely on legal counsel to look at that for us.

17 Q All right.

18 A We also talked to the DOT about that.

19 Q Where was your meeting with -- did you actually
20 meet with DOT?

21 A We did. We met with them in Columbia.

22 Q And do you recall exactly when that was, while it
23 was when the contract was pending?

24 A It was when the contract was pending. I don't
25 recall exactly when it was.

1 Q When you left that meeting, did you have any
2 concerns about access to the property?

3 MR. ACHURCH: Your Honor, I'm going to object.
4 That's just a roundabout way of telling what they told.

5 THE COURT: Okay. Overruled. You can ask him.

6 BY MR. WALKER:

7 A Ask -- ask the question again, please.

8 Q All right. After that meeting with South Carolina
9 Department of Transportation, did you have any
10 significant concerns about access to the property?

11 A We didn't. We knew there was this two-tenths of a
12 mile stretch of road that was dirt. DOT's maintenance
13 ended where the paved road ended, and there was this
14 two-tenths of a mile of road before you got to the
15 property line. But we uncovered a -- through the public
16 records, we found a plat that had been recorded by the
17 previous landowner that provided access --

18 MR. ACHURCH: Your Honor, I'm going to object to
19 that.

20 THE COURT: Basis?

21 MR. ACHURCH: He's reading about a plat -- did he
22 do the re -- I don't think he did the --

23 THE COURT: I have no idea if he did the research.

24 MR. ACHURCH: I don't think he did the research. I
25 don't think he did that.

1 THE COURT: Okay.

2 BY MR. WALKER:

3 Q Was this plat provided to you?

4 A It was.

5 Q Did you personally review it?

6 A I did.

7 Q Did it have identifying information on it?

8 A It did.

9 Q And when was the plat dated from?

10 A It was in the '50s. It was an old plat. It was --
11 my understanding that, when the land was subdivided and
12 given to either first cousins or brothers, I -- I'm not
13 sure, that the person who subdivided the land recorded
14 this plat to provide access --

15 MR. ACHURCH: Your Honor, I'm going to object to
16 that. He's talking about subdividing land and how the
17 plat came to be. He doesn't know how the plat came to
18 be.

19 BY MR. WALKER:

20 Q Does the --

21 MR. ACHURCH: He can say what's on the -- he can
22 say he looked at the plat and what it --

23 THE COURT: And what it showed.

24 BY MR. WALKER:

25 Q What did the plat show?

1 A It showed access to the property.

2 Q Did it show the width?

3 A It did. It was plenty of width. I think it was
4 fifty-seven feet.

5 Q Okay. Even though you had this information, did a
6 controversy erupt about whether there was access?

7 A Well, we gathered this information together, and
8 even talked to our title insurance company about it, and
9 they affirmed that it appeared to be --

10 MR. ACHURCH: Your Honor, I --

11 MR. WALKER: You can't say what they said.

12 THE COURT: Thank you.

13 A Okay. Thank you.

14 MR. WALKER: I just want to move to the
15 controversy.

16 A Okay.

17 THE COURT: Ladies and gentlemen, just so you
18 understand what the objections are, he can't say
19 something that someone else said. That's hearsay, and
20 that's not appropriate, because there's no opportunity
21 to cross-examine that person. So, he can only say what
22 he knows. All right? So, let's keep it going.

23 BY MR. WALKER:

24 A Okay. So, once we had assembled all of our
25 information, we -- we did submit a request to the DRT to

1 review a site plan and give us guidance on how to
2 develop the property. And it was there where they told
3 us that we needed to go affirm with the property owner
4 --

5 MR. ACHURCH: Your Honor.

6 BY MR. WALKER:

7 A -- that the -- that we had sufficient access,
8 although we had been told by many groups that we did.
9 So, we approached that property owner, and then, they
10 became aware that there was, in my view, a potential
11 that they could get some money for this, and they went
12 and put fenceposts in the road.

13 Q Where were those fenceposts?

14 A They were on the two-tenths of a mile of dirt road.

15 Q Was there a litigation to remove those fenceposts?

16 A There was, and I don't know the legal terminology,
17 but I know that John Pinckney was concerned about
18 whether emergency vehicles could get to his house, in
19 case he -- he was an elderly man, and his wife was sick.
20 And so, he did contact the County, and said that he had
21 concerns about these fenceposts, and --

22 THE COURT: Okay. Once again, you can't say what
23 someone else said. You just need to say, as a result of
24 a meeting, this is what we did. Okay?

25 A Okay. Okay.

1 BY MR. WALKER:

2 Q Would you tell us whether or not there was
3 litigation --

4 A There was litigation.

5 Q -- as a result in the actions that he took.

6 A There was litigation.

7 Q Was a suit brought?

8 A It was, by the County.

9 Q I'm going to hand you what's been marked as Exhibit
10 94. Can you tell me whether you can identify that.

11 A It's a complaint filed by Beaufort County.

12 Q And who are the defendants?

13 A John David Pinckney; David Marion Pinckney; Sidney
14 Dean Pinckney; Wayne Baker; Virginia Baker; Dorothy
15 Gnann, David M. Pinckney; Gay D. Pinckney; PPF, LLC.

16 Q Was PPF, LLC, the owner of the property who you
17 were buying it from?

18 A They were.

19 Q All right.

20 MR. WALKER: And we'd offer this into evidence. We
21 understand it's without objection.

22 THE COURT: Without objection?

23 MR. ACHURCH: Without objection.

24 THE COURT: Without objection, it's in evidence.

25 MR. WALKER: 94. If we could see it on the screen.

1 If you could bring it up, please, a little bit, sir.

2 If I didn't introduce this guy that I keep pointing
3 to, that's Dave Roberts, and he's the one who does the
4 projection.

5 ITEM IDENTIFIED AS COMPLAINT,
6 BEAUFORT COUNTY VERSUS PINCKNEY POINT,
7 MARKED PLAINTIFFS' EXHIBIT NUMBER 94,
8 ADMITTED AS EVIDENCE.

9 BY MR. WALKER:

10 Q All right. Is that the complaint you were just
11 referring to?

12 A Yes, it is.

13 Q Does it have a stamp on it showing when it was
14 filed, on the side?

15 A November 5th, at 10:48. It doesn't have a year.

16 Q Would that be November 26, 2005?

17 A November 22, '05. I'm sorry.

18 Q Okay.

19 A Okay.

20 Q And if we would, let's turn to the factual
21 allegations that are on Page 3 at Paragraph 18. Do you
22 have that before you?

23 A I do.

24 Q All right. And what does that say?

25 A The defendant, John David Pinckney, has

1 *raised objections to the two-tenths'*
2 *portion of Pinckney Colony Road being*
3 *used by the general public, as it is*
4 *his contention that the road it private*
5 *and owned by him, and/or, at least, one*
6 *or more of the individual named defendants.*

7 Q *And I'd like you to go back a page, to Page 2, and*
8 *particularly Paragraph 13. Do you have that there?*

9 A *I do.*

10 Q *All right. And this was filed by the County. What*
11 *does 13 say?*

12 A *That, upon information and belief, Beaufort*
13 *County road crews have maintained and have*
14 *made improvements to the unpaved portion of*
15 *Pinckney Colony Road for over twenty years,*
16 *and they have acquired legal rights to the*
17 *road through a prescriptive easement and/or*
18 *an implied dedication.*

19 Q *And that's on the next page?*

20 A *That's correct.*

21 Q *And then, 14, what does that say?*

22 A *That, upon information and belief, Pinckney*
23 *Colony Road has been used by the general*
24 *public for over twenty years without objection*
25 *by the above-named defendants.*

1 Q All right. At some point, did Pinckney Point, LLC,
2 your company, become substituted for PPF, LLC, yourself?

3 A We did.

4 Q All right. That would have been after closing?

5 A Yes.

6 Q Okay. Now, if we could go back to the aerial,
7 please. If you could please project that. I think it's
8 140. Where was John David Pinckney's property?

9 A It's the rectangular-looking meadow before you get
10 to the -- the wooded neck leading into the large piece.

11 Q All right. And could we get a little bit of a
12 closeup on that, please.

13 A Yes, that -- that's right.

14 Q Is that it right there?

15 A Yes, it is.

16 Q And did he also claim ownership of the unpaved
17 portion of the road?

18 A He did.

19 Q Okay. Now, was this suit filed before you closed?

20 A Yes, it was.

21 Q Okay. As a result of this controversy over that
22 access and John David Pinckney's claims, was there an
23 adjustment to the purchase price that you all were going
24 to pay for Pinckney Point?

25 A Yes.

1 Q And what was that adjustment?

2 A It was approximately five million dollars.

3 Q Did Stokes Land Group end up purchasing Pinckney
4 Point?

5 A We did.

6 Q Was it purchased in the name of Stokes Land Group,
7 or some other entity?

8 A Another entity.

9 Q Was that entity created in order to own and develop
10 the property?

11 A It was, yes.

12 Q What was that?

13 A Pinckney Point, LLC.

14 Q I'm going to show you what's been marked as 84.

15 THE COURT: I'm sorry. He just asked me if he's a
16 allowed to make notes. If you do make notes, though,
17 you're going to have to show them to both sides.

18 A Okay.

19 THE COURT: So.

20 A Okay.

21 THE COURT: Okay.

22 BY MR. WALKER:

23 Q Do you recognize Exhibit 84?

24 A This is a general warranty deed.

25 Q From who to whom?

1 A Pinckney Point, LLC, is the grantee. PPF, LLC, is
2 the grantor.

3 MR. WALKER: Your Honor, we would move 84 into
4 evidence, we understand, without objection.

5 THE COURT: Without objection?

6 MS. LOHR: Without objection, your Honor.

7 MR. ACHURCH: Without objection.

8 MR. WALKER: That was a double without objection,
9 your Honor.

10 ITEM IDENTIFIED AS GENERAL WARRANTY
11 DEED FROM PPF, LLC, TO PINCKNEY
12 POINT, LLC,
13 MARKED PLAINTIFFS' EXHIBIT NUMBER 84,
14 ADMITTED AS EVIDENCE.

15 MR. WALKER: All right. Could we have it on the
16 screen, please. 84. Dave, if you could get a little --
17 there you go. A little more, please. Highlight the
18 first paragraph.

19 BY MR. WALKER:

20 Q Mr. Bush, Taylor, is the first paragraph the one
21 that you were just referring to, identifying the
22 grantor, or the person selling, and the grantee, who is
23 receiving?

24 A Yes.

25 Q If we turn the page, to Page 2, does it show when

1 that deed was executed?

2 A It was executed on March 29, 2006.

3 Q And if you go to the very last page of that, of
4 that exhibit, do you see there's an affidavit?

5 A I do.

6 Q And what does it state that the purchase price was?

7 A Ten million six hundred thousand dollars.

8 Q All right. And which line is that?

9 A It's on Line 4(a).

10 Q All right. Did Pinckney Point obtain title
11 insurance?

12 A We did.

13 Q Did it include the road access?

14 A Yes, it did.

15 Q The dirt road access?

16 A It did.

17 Q Did you, based on what you had done and learned
18 about the facts concerning the public access and the use
19 of the road, did you think that the County had a strong,
20 weak, or neutral case? What did you think?

21 A I thought they --

22 MR. ACHURCH: Your Honor, I'm going to object.

23 THE COURT: He's asked for a legal opinion, and he
24 can't give that.

25 A Okay.

1 BY MR. WALKER:

2 Q What did you, as a -- did you think that there were
3 good facts for the County's position?

4 MR. ACHURCH: That's the same question.

5 BY MR. WALKER:

6 Q Based on what you knew.

7 MR. ACHURCH: I object.

8 THE COURT: He can't answer that, Mr. Walker.

9 BY MR. WALKER:

10 Q Did Pinckney Point check the zoning before it
11 closed on the property?

12 A Yes.

13 Q And what did you understand -- was zoning important
14 to your considerations to development?

15 A Yes.

16 Q Why?

17 A Well, we needed to be sure that we could develop
18 the property for the use that we intended to use it for.

19 Q And what was that use?

20 A Residential.

21 Q And what did you learn that the zoning was?

22 A I don't remember the acronym for the
23 classification, but it was zoned for approximately 90
24 home sites.

25 Q Did Pinckney Point intend to built 90 home sites?

1 A We eventually -- I don't recall exactly how we
2 evolved into deciding to develop 76, but when we were
3 going through the land planning process, we wanted to
4 preserve the home site, the homestead. So, there were
5 some lots given up for that reason. We ultimately
6 decided to develop 76 lots.

7 Q Did Pinckney Point acquire some property in
8 addition to that Point tract that was off Pinckney
9 Colony Road?

10 A We did. There were -- there were some -- I think
11 there were four lots along Pinckney Colony Road, along
12 the two-tenths portion of the road.

13 Q All right. Could we have the aerial again, please.
14 And if you could zoom up on over, just looking at, that
15 showed the -- the field of -- yeah, right there.

16 Would those -- where are those lots located, in
17 relation to that field that you had pointed out that
18 John David Pinckney had?

19 A They are between the field and the cleared land
20 that we purchased at the end.

21 Q All right. And was there a third person whose
22 property you did not buy, who also had a lot in that
23 area?

24 A There was.

25 Q What was that owner? Who was that owner?

1 A Dorothy Gnann.

2 Q Okay. And why did you purchase these four lots
3 here off Pinckney Colony Road leading up to Ms. Gnann's
4 property?

5 A Well, we just thought it would be good to own those
6 four lots, as well. They were lead -- the window to the
7 property, and we thought it was -- it was a good
8 investment to own those.

9 Q All right. Yesterday, in the opening statements,
10 the lawyers were talking about different things that the
11 developer does when they get property like this. Would
12 you let us know what goes on after closing, what you
13 were doing, in order to move this development forward?

14 A Well, you know, it's a saying in our business that,
15 when you walk to the car following a closing where
16 you've purchase a piece of property, you start trying to
17 figure out how you're going to get rid of it. And so,
18 for us, immediately, you know, we start our design work,
19 our engineering, our permitting, all the things that are
20 necessary in order to develop the property and to sell
21 it, which is our ultimate goal.

22 Q Had you actually undertaken some of those steps
23 before closing?

24 A We did a lot of the due diligence before closing,
25 as much as we could.

1 Q All right. And did you get consultants involved in
2 this project for you to help you with it?

3 A Yeah, we had a number of consultants in various
4 expertise.

5 Q Who did you have on the, say, engineering and
6 surveying side?

7 A Ward Edwards.

8 Q Where are they based?

9 A They're based out of -- out of Bluffton, I believe,
10 is where their office is.

11 Q How about on the land planning side? Did you have
12 anybody, a land planner, that you involved?

13 A I think their office is actually here in Beaufort.
14 Pardon me. I think.

15 Q Okay. How about land planning.

16 A We -- we used two different land planners.
17 Initially, we used Edward Pinckney & Associates. And
18 then, we used Dan Keefer.

19 Q And what was the job -- would you tell us the
20 difference between the jobs of the land planner and the
21 engineers.

22 A The land -- the land planners, they come up with a
23 conceptual plan that complies with the zoning and all
24 the rules and regulations that are a part of developing
25 the property. So, they -- they have to make sure that

1 all your open spaces meet the zoning criteria, your lot
2 widths are -- and side setbacks and all those things are
3 accurate.

4 Q Who prepared the first site plan? Which one,
5 Whitmer Jones Keefer, or the other firm, Edward
6 Pinckney?

7 A Edward Pinckney firm prepared the first one.

8 MR. WALKER: Robert, your copy would be in the
9 notebook under 3.

10 May I approach the witness and let him look at 3?

11 THE COURT: Yes, you may.

12 MR. ACHURCH: I don't object.

13 THE COURT: Without objection, Number 3 is in
14 evidence.

15 MR. WALKER: Thank you, your Honor. If we could.

16 ITEM IDENTIFIED AS PINCKNEY POINT

17 CONCEPTUAL MASTER PLAN

18 MARKED PLAINTIFFS' EXHIBIT NUMBER 3,

19 ADMITTED AS EVIDENCE.

20 BY MR. WALKER:

21 Q Taylor, Exhibit 3 has been admitted into evidence.
22 It's titled *Pinckney Point Conceptual Master Plan*. Did
23 you review this at the time it was prepared?

24 A I did.

25 Q And there's a date, if we could lift it up, a date

1 in the lower right-hand corner. Do you see that?

2 A I do.

3 Q And what is the date of that?

4 A September 21, 2005.

5 Q If we could go back to the larger image, please.
6 How many lots does this show?

7 A Seventy-six.

8 Q And could you tell us generally what's going on
9 here. What the plan was? I mean, we're looking at it,
10 but would you explain it to us.

11 A Yes.

12 Q And if you want to walk --

13 MR. WALKER: May he go up and point out different
14 things, your Honor?

15 THE COURT: You may.

16 MR. WALKER: All right.

17 BY MR. WALKER:

18 Q What I'd like you to do is walk us all through the
19 concept that you're submitting and what you wanted to do
20 with the property.

21 A So, this was the entryway onto the property. The
22 four lots that we referred to earlier were up and down
23 here, in this area here. And so, the entryway, and
24 then, we just decided to build a loop road, and just
25 develop the perimeter lots, with some interior lots

1 here; and to dig a large lake, which was also going to
2 be for storm water retention, as well.

3 We had an amenity site here we decided not to
4 develop the homestead. We -- it -- it was premium
5 property, but we just felt like, from talking to the
6 neighbors, that they had family reunions here for
7 generations, and we just felt it was appropriate that,
8 that not be disturbed. So, we decided to make this the
9 amenity, and our thinking there was that this space
10 would be available for everyone to enjoy.

11 And we had some docks here, which, originally, we
12 planned to put individual docks on these lots, but in
13 meeting with the Corps of Engineers, they asked us if we
14 could consider community docks. And we said that would
15 be fine. So, these represent ten slips per each
16 community dock. We had one over here. And that was the
17 basic concept.

18 Q There's a little teardrop, it looks like, island,
19 in the upper-left.

20 A Yeah.

21 Q What is that? Tell us about it.

22 A Well, it's called Jackass Island. And the only
23 thing I could conclude is, they must have kept their
24 donkeys out there.

25 Q All right.

1 A But it was just an open island that was separated
2 from the mainland. This is a tidal creek running
3 through here. And so, our plan was just to make that an
4 open parks area.

5 Q And I see on this blowup you had something about
6 canoe, kayak launch, and storage?

7 A We did. If you could make it smaller. Where do
8 you see it?

9 Q It was up next to Jackass Island.

10 A Yeah. Actually, this -- this -- the idea there was
11 that there would be some kayaking and canoeing at the
12 lakes.

13 Q All right.

14 A I was a little confused, because we eventually had
15 a boat ramp permitted for this area.

16 Q As we go through your testimony, we'll get to that
17 later on.

18 All right. And was there open space?

19 A Yes.

20 Q For the community?

21 A An unusually large amount of open space. Because
22 of the density, it was going to have over fifty percent
23 of the property was going to be open space.

24 Q What is the pink area around the perimeter of the
25 point?

1 A This is the -- the wooded area. The property had
2 been farmed, so they had cleared everything they could
3 in order to farm the property. And then, they just left
4 this wooded area that you see.

5 Q Was it your intent to move that access road onto
6 the property from where it had historically been
7 located?

8 A Yes.

9 Q All right. And where, if you'd show us again,
10 where the historical road went to the main house.

11 A The road still today is located right here, through
12 this wooded area here.

13 Q What was your intent to do with that, if a site
14 plan was approved allowing you to move the road to where
15 you're showing it here?

16 A We were going to re-plan it, re-store it.

17 Q Was it your intent to allow any of the houses to be
18 built within the trees that we see, the area marked
19 there, the pink?

20 A No. No, we were going to have all the homes built,
21 you know, forward of all the tree line.

22 Q Okay.

23 Q When you say *forward*, do you mean on the land side?

24 A On the land -- on the river side of the tree line.

25 Q All right. Thank you, Mr. Bush.

1 What was your plan with respect to wastewater? what
2 might be called sewer or runoff, household runoff. What
3 was your plan?

4 A Well, we --

5 MR. ACHURCH: Your Honor, I think we have
6 background on the concept of what they were doing. I
7 don't see how that's germane to whether or not we
8 violated the contract or not. I'm going to object to
9 the continuing testimony.

10 THE COURT: Okay.

11 MR. WALKER: It is germane to the dispute that
12 arises after the contract was signed. It puts it in
13 context.

14 MR. ACHURCH: I can't understand that.

15 MR. WALKER: It also responds to the comment that
16 was made by Counsel in opening statement yesterday.

17 THE COURT: I'm going to give you a little bit of
18 latitude, but we do need to kind of get to it, I think.

19 MR. WALKER: Okay.

20 BY MR. WALKER:

21 Q What did you plan?

22 A Initially, we planned to put -- to hook to the
23 sewer system, to the county sewer system.

24 Q Why?

25 A It's a better solution for the environment.

1 Q All right. Did you actually have -- did you
2 commission the engineers to do that?

3 A We did.

4 Q And did you have reason to think that was
5 acceptable to the County?

6 A We did. We had met the County and talked to them
7 about it, and they said they preferred that.

8 MR. ACHURCH: Your Honor, I object.

9 THE COURT: Okay. Basis?

10 MR. ACHURCH: It's beyond the scope of what -- you
11 gave him some latitude, your Honor. That was his plan.
12 He talked about his plan.

13 THE COURT: Okay. Well, as it ties into something
14 that occurred after the contract was entered into, let's
15 just tie it in.

16 MR. WALKER: All right.

17 BY MR. WALKER:

18 Q There we go. And if we could --

19 MR. ACHURCH: Your Honor, I'd like to -- I don't
20 believe the witness can testify to who told him that,
21 and I'd object. I mean, we deposed him before. He says
22 he doesn't know.

23 THE COURT: Okay. You can cross-examine him.

24 MR. ACHURCH: Thank you.

25 BY MR. WALKER:

1 Q As part of this process, did your team basically
2 submit something to the County, so that they could
3 comment on it?

4 A From -- yes, from time to time, we would submit
5 requests and letters and site plans.

6 Q All right. And what was the first wastewater
7 system that was designed for Pinckney Point? What did
8 it -- what type was it?

9 A It was a system that would tie into the County
10 sewer system. So, it was a gravity sewer system, we
11 call it.

12 Q And before we get to that, I'm going to ask you
13 some more about that in a minute. But did you also do
14 something about storm water on the property?

15 A We did.

16 Q What was the plan for the storm water? What were
17 you going to do?

18 A We -- well, we wanted to design a storm water
19 system that would be a hundred-year storm system. Most
20 municipalities require that you design to a 25-year
21 storm system. But we had this opportunity to build
22 these large lakes, so we thought we would take advantage
23 of that opportunity to provide a hundred-year storm
24 system that would -- it would just be a better storm
25 system in the case of flooding.

1 Q Okay. And what does that do with respect to
2 whether the water's going to run off the property, into
3 the marsh, or run somewhere else?

4 A Well, with a 25-year storm system, it's -- it's
5 highly probable you'll have outfall. But with a
6 hundred-year storm system, it's -- it's unlikely that,
7 that would happen. So, there would be no water
8 outfalling into the rivers, or it would be on a very
9 rare occasion when there was a major storm.

10 Q And was the County receptive to your initial site
11 plan?

12 A They were.

13 Q All right. Now, I would like to move on to --
14 MR. ACHURCH: I'll object to that.

15 MR. WALKER: I think he can say what their attitude
16 was.

17 MR. ACHURCH: I don't think he can say what their
18 attitude was at all.

19 BY MR. WALKER:

20 Q Based on what was communicated to you, what did you
21 understand about the County's reaction to what your
22 initial site plan was?

23 MR. ACHURCH: That's the same question.

24 THE COURT: He can say how they react. I think he
25 can say how they reacted.

1 BY MR. WALKER:

2 A On -- on the points of density and the sewer system
3 and those type of things, we didn't get any objection,
4 initially.

5 Q Along the way, was there objection?

6 A Yes.

7 Q Did you receive letters from the County in response
8 to your site plans, initially?

9 A We did.

10 Q Number 7.

11 MR. ACHURCH: Your Honor, this is part of the prior
12 permitting that we discussed with your Honor.

13 THE COURT: Do I need to review it or?

14 MR. ACHURCH: I've reviewed it, and I just have an
15 objection that we had discussed previously, your Honor.

16 THE COURT: Who is the letter from?

17 MR. WALKER: It's from Hillary Austin to Mr. Bush.

18 THE COURT: Okay.

19 MR. WALKER: And I'd be happy for your Honor to
20 take a look at it.

21 THE COURT: Okay. And I'm assuming you're going to
22 tie the relevance in for me?

23 MR. WALKER: Yes.

24 THE COURT: Okay. It's part of the context of --

25 MR. WALKER: Yes.

1 THE COURT: Okay.

2 BY MR. WALKER:

3 Q Okay. Mr. Taylor, if you'd take a look at that.
4 Do you recall receiving that?

5 A Yes.

6 Q Now, is that letter, which has been marked as
7 Exhibit 7, a typical letter, or -- that you would
8 receive from the County, or a form of it, making
9 comments?

10 A Yes.

11 Q All right. Do you remember receiving it?

12 A I mean, I know that I received it. I don't
13 remember physically receive --

14 Q I understand.

15 A Okay.

16 Q I mean, you don't remember going to the box and
17 getting it.

18 MR. WALKER: Your Honor, we would move that into
19 evidence.

20 THE COURT: Okay. Subject to your objection, I'm
21 going to let it in evidence. Your objection is deemed
22 not relevant.

23 MR. ACHURCH: Thank you.

24 ITEM IDENTIFIED AS LETTER FROM
25 HILLARY AUSTIN TO TAYLOR BUSH

1 MARKED PLAINTIFFS' EXHIBIT NUMBER 7,
2 ADMITTED AS EVIDENCE.

3 MR. WALKER: All right. If we could put up Exhibit
4 7.

5 BY MR. WALKER:

6 Q As the jury can see, there is an introductory
7 paragraph, and there are a number of comments on
8 different things, correct?

9 A Yes. Correct, yes.

10 Q And what would you do when you got those comments?
11 What did you understand you needed to do, if anything,
12 in response?

13 A Well, you -- you want to respond to all of them. I
14 mean, so, we -- we start going through these, and -- and
15 working on them.

16 Q How many comments were there?

17 A This letter has eleven.

18 Q All right. And I'm not going to ask you about the
19 individual comments.

20 A Okay.

21 Q All right. Put that aside. Did you get another
22 letter with similar comments not too long after that, on
23 March 29, 2007, that was marked as Plaintiffs' Exhibit
24 8?

25 A Yes.

1 Q I do have a question on this letter in particular.
2 Do you recall, again, receiving this letter?

3 A I did, yes.

4 Q Does it contain comments again?

5 A It does.

6 Q Is this part of the back and forth?

7 A It is.

8 MR. WALKER: Your Honor, we would move this into
9 evidence.

10 THE COURT: Okay. Subject to your prior objection.

11 MR. ACHURCH: Your Honor, we have the same
12 objection as to relevance that we previously discussed,
13 which I'd be glad to --

14 THE COURT: Okay.

15 MR. ACHURCH: -- reiterate, but I'll --

16 THE COURT: That's all right. Just, subject to
17 your prior objection, I do think this goes to an issue.

18 MR. ACHURCH: And the Counsel promised to wrap it
19 into something eventually.

20 THE COURT: Right. And I think he's going to get
21 there on a number -- on the first one, so let's get to
22 it.

23 MR. WALKER: That's correct.

24 ITEM IDENTIFIED AS LETTER FROM

25 HILLARY A. AUSTIN TO TAYLOR BUSH,

1 MARKED PLAINTIFFS' EXHIBIT NUMBER 8,
2 ADMITTED AS EVIDENCE.

3 BY MR. WALKER:

4 Q Could we have the letter, please.

5 And if you could go up and feature the first part
6 of the letter, please, coming down. All right. Now,
7 I'd like you to go over the second paragraph here that
8 the jury is looking at. What does it say? If you
9 would, read it to us.

10 A After unanimous vote by the members present,
11 DRT recommended the project be deferred
12 until the deficiencies listed in the
13 recommendation letter dated March 19th are
14 addressed.

15 The following comments were also made: DR --

16 Q What does deferred mean?

17 A Just, they're not going to take any action until
18 these things are done.

19 Q And what was the first comment?

20 A DRT will not approve sewer to the site --

21 MR. ACHURCH: Your Honor. Your Honor, I apologize,
22 again. I did object to the exhibit, and I just want to
23 make sure I have my objection on the record for the
24 testimony.

25 THE COURT: Thank you. It's noted, for the record.

1 MR. ACHURCH: Thank you.

2 THE COURT: Thank you.

3 BY MR. WALKER:

4 A DRT will not approve sewer to the site,
5 because it is more than the required 300
6 feet.

7 Q I don't know if we went over this, but what does
8 DRT stand for?

9 A I'm going to assume it's Design Review Team.

10 Q Okay. Is that administrative--

11 MR. ACHURCH: It's Development Review Team. We'll
12 stipulate to that.

13 THE COURT: Okay.

14 A I was close.

15 BY MR. WALKER:

16 Q Is that within the Planning Department of Beaufort
17 County?

18 A Yes.

19 Q Planning and Zoning.

20 A Yes, it is.

21 Q Okay. Now, as a result of the County's position
22 about sewer, what did you do?

23 A Well, we had already engineered a sewer system for
24 this site, based on our meetings back in '04 and '05.

25 And so, the site was fully engineered and ready to be

1 permitted. And we had to scrap those plans and throw
2 them away, and we had to start working on septic tank
3 permits.

4 Q And who did that for you?

5 A We hired a fellow named Lorick Fanning to do that.

6 Q All right.

7 A He's kind of an expert in those type of things.

8 Q And we'll get back to that in a few minutes, but
9 because of the timing of this, I want to talk about the
10 access road that you wanted to do. So, we're going to
11 switch from the sewer/septic, over to the access road.
12 Okay?

13 A Okay.

14 Q Now, did Beaufort County have an ordinance that
15 involved river buffers?

16 A Yes.

17 Q All right. And what is your understanding of that
18 ordinance?

19 A That there is no -- not to be any building activity
20 in the river buffer.

21 Q We saw your master plan earlier to take the road
22 out of the woods, and move it into the middle of the
23 property. Did that shift in the road alignment cause
24 any issues with respect to the river buffer ordinance?

25 A It apparently did, yes.

1 Q Were you required to make an application for --
2 could you do it under the zoning?

3 A Well, the staff said we could not. The County said
4 we could not.

5 Q Did you then make an application so to obtain
6 permission to do that?

7 A We did.

8 Q What did you apply for?

9 A Well, the road was located -- 1,700 feet of the
10 road was already in the river buffer. And so, we were
11 applying to remove 1,650 feet of it out of the river
12 buffer, and to just leave fifty feet in the river
13 buffer.

14 Q All right.

15 MR. ACHURCH: And while he's passing these, all
16 right, your Honor, I'd just, again, renew my objection
17 to this line of --

18 THE COURT: Line of testimony?

19 MR. ACHURCH: -- line of questioning.

20 THE COURT: Yes, sir.

21 BY MR. WALKER:

22 Q What does the photograph marked as Plaintiffs'
23 Exhibit 113 show?

24 A This is the road that runs up to the house. The
25 1,700 feet that I referred to that's in the river

1 buffer.

2 Q Does it reasonably and fairly and accurately depict
3 that road through the trees?

4 A It does.

5 MR. WALKER: We'd move that into evidence, your
6 Honor.

7 THE COURT: Okay. Again, subject to its relevance.

8 MR. ACHURCH: Subject to its relevance, your Honor,
9 I object.

10 THE COURT: Okay. It's in evidence.

11 ITEM IDENTIFIED AS PHOTOGRAPH OF ROAD
12 MARKED PLAINTIFFS' EXHIBIT NUMBER 113,
13 ADMITTED AS EVIDENCE.

14 MR. WALKER: All right. If we could have it,
15 please.

16 BY MR. WALKER:

17 Q Which direction in this -- are we looking at in
18 this picture here, Mr. Bush?

19 A I can't be a hundred percent certain.

20 Q Okay. And if the variance was granted, what were
21 you going to do with this road right here, the historic
22 road to the house?

23 A We were going to abandon that road, and bring it
24 back up to natural grade, and plant it.

25 Q Okay. You mentioned that you applied for

1 variances. You had plans to show what you were going to
2 do with the road?

3 A We did.

4 MR. WALKER: This is Exhibit 9 in everybody's book.

5 BY MR. WALKER:

6 Q What is Exhibit 9, Mr. Bush?

7 A This was our proposed new route for the road, so
8 that we could get it out of the river buffer.

9 Q Did you review this before it was submitted?

10 A I did.

11 Q Did you approve it?

12 A I did.

13 Q Does this show the relocation you've been telling
14 us about?

15 A It does.

16 MR. WALKER: We we'd move this into evidence, your
17 Honor.

18 MR. ACHURCH: My only objection is based on the
19 relevance.

20 THE COURT: Okay. Thank you.

21 MR. ACHURCH: Thank you.

22 THE COURT: It's in evidence.

23 ITEM IDENTIFIED AS PROPOSED NEW

24 ROUTE FOR ROAD (COUNTY SUBMITTAL

25 PLAN FOR MAIN ENTRANCE BY AIDS, VARIANCE),

1 MARKED PLAINTIFFS' EXHIBIT NUMBER 9
2 ADMITTED AS EVIDENCE.

3 BY MR. WALKER:

4 Q Did you also have a new site plan prepared,
5 Plaintiffs' Exhibit 10, that showed the relocated road?

6 A Yes.

7 Q All right. Did you review the site plan that's
8 Plaintiffs' Exhibit 10, dated April 12, 2007, before it
9 was submitted?

10 A I did.

11 Q Okay.

12 MR. WALKER: We would move that into evidence, your
13 Honor.

14 THE COURT: Again, subject to your objection to
15 relevance.

16 MR. ACHURCH: The same objection, your Honor.
17 Thank you.

18 THE COURT: Thank you. Number 10 is in evidence.

19 ITEM IDENTIFIED AS SITE PLAN SHOWING
20 RELOCATED ROAD, DATED APRIL 12, 2007,
21 (CONCEPTUAL MASTER PLAN BY AIDS, VARIANCE),
22 MARKED PLAINTIFFS' EXHIBIT NUMBER 10
23 ADMITTED AS EVIDENCE.

24 MR. WALKER: All right. Would you please show 9
25 for us. Well, 10's fine. We can stick with 10.

1 BY MR. WALKER:

2 Q Does this show the area that you're talking about,
3 10, your new concept plan here, Taylor, 10?

4 A Yes, it does.

5 Q And could we focus in, please, Dave, on -- down
6 below -- yeah, there you go.

7 Now, is that where you wanted to move the road?

8 A Yes.

9 Q Okay. Now, could we show 9, please.

10 All right. What is the yellow in 9?

11 A That's the original road.

12 Q Okay. And --

13 A That's just a -- it's a portion of it.

14 Q All right. And what do we see next to it, turning
15 to the right?

16 A That's the proposed new route.

17 Q There is a part of that proposed new route that has
18 shading in it. What does that signify?

19 A The -- there's two types of shading there. There's
20 a hatch, and then, there's -- so, the -- the shading in
21 the middle, we were going to use impervious [sic]
22 material, which is -- it's better for the -- water will
23 seep through it. So --

24 Q Did you mean pervious?

25 A I'm sorry, pervious.

1 Q Okay.

2 A Thank you for correcting me.

3 Q What was located in this location at the time you
4 proposed this? What was there? Was it heavily
5 vegetated?

6 A It was a pine thicket. Just small, little pine
7 trees.

8 Q Were there any power lines on the property?

9 A There was a -- you could see the power line in this
10 exhibit that was running along the side of the yellow
11 area.

12 Q Okay. Did this application for a variance go
13 before the Board of Zoning Appeals?

14 A It --

15 Q Or the Zoning Board of Appeals?

16 A It did.

17 Q What happened?

18 A It was denied.

19 Q After it was denied, was there an appeal?

20 A Yes, we appealed it.

21 Q Did you do anything after the appeal to attempt to
22 resolve it?

23 A Eventually, we settled to resolve it.

24 Q Okay. But before your settlement years later, did
25 you do anything immediately to attempt to resolve it?

1 A I don't understand that. I mean, we -- we appealed
2 it to the Court.

3 Q Was there a mediation conference?

4 A Yeah, there was a mediation conference.

5 MR. ACHURCH: Your Honor, I object to leading the
6 witness, and I also believe again that, that's --

7 THE COURT: Okay.

8 MR. ACHURCH: -- irrelevant to where we are.

9 MR. WALKER: All right. That's fine.

10 THE COURT: Thank you.

11 MR. ACHURCH: Also, mediations are confidential.
12 Your Honor, if it please the Court -- thank you -- I
13 won't have to continue objecting, and if we could just
14 agree that I object to the entire line of testimony
15 about permitting or issues that occurred before the --

16 THE COURT: All right.

17 MR. ACHURCH: -- before the contract.

18 THE COURT: Before the settlement agreement.

19 MR. ACHURCH: If that would please the Court and
20 Counsel.

21 MR. WALKER: I understand a running objection.

22 THE COURT: Thank you.

23 MR. ACHURCH: Thank you, your Honor.

24 THE COURT: I do, too. And it's noted for the
25 record.

1 MR. WALKER: Nothing will be deemed abandoned.

2 MR. ACHURCH: Thank you, your Honor.

3 MR. WALKER: Everything will be treated with vigor.

4 MR. ACHURCH: Thank you.

5 BY MR. WALKER:

6 Q All right. Moving along to your effort to get a
7 site plan approved, did you continue to work with the
8 County on your site plan?

9 A Yes, we did.

10 Q Did you continue to have this exchange with the
11 County DRT, Development Review Team?

12 A We did, yes.

13 Q Okay. I'm going to hand you Plaintiffs' Exhibit
14 11. Do you recognize that?

15 A I do.

16 Q What is this?

17 A This is another response from the DRT.

18 Q Do you recall receiving it?

19 A I do.

20 Q Who sent the letter?

21 A It was sent by Jennifer Frantz.

22 Q All right.

23 A I'm -- I'm sorry. I'm sorry. It was sent to
24 Jennifer Frantz. It was sent by Hillary Austin.

25 Q Did you receive a copy of this shortly after it was

1 received by Ms. Frantz?

2 A I did.

3 Q Who is Ms. Frantz with?

4 A She was with Atlantic International Design Studio,
5 another group that was helping us.

6 Q Okay.

7 MR. WALKER: Your Honor, we would move Plaintiffs'
8 Exhibit 11 in.

9 THE COURT: Okay. Subject to your prior objection,
10 yes.

11 MR. ACHURCH: Thank you, your Honor.

12 ITEM IDENTIFIED AS LETTER FROM
13 HILLARY AUSTIN TO JENNIFER FRANTZ,
14 ATLANTIC INTERNATIONAL DESIGN,
15 MARKED PLAINTIFFS' EXHIBIT NUMBER 11
16 ADMITTED AS EVIDENCE.

17 BY THE COURT:

18 THE COURT: Ladies and gentlemen of the jury, do
19 you all need a break? Just a quick five-minute break?
20 Are you sure? Yes. I'm hearing yes.

21 All right. Ladies and gentlemen, do not discuss
22 this case. It wouldn't be appropriate to do so, and we
23 will be right back with you.

24 Mr. Foreperson, as soon as you all are ready to
25 come back into the courtroom, just knock on the door

1 when you all have refreshed yourselves, and grab a cup
2 of coffee. Okay.

3 JURORS LEAVE COURTROOM 10:49 A.M.

4 BAILIFF: Jury's clear, your Honor.

5 THE COURT: Thank you. All right. Sir, you are
6 welcome to step down. You just cannot discuss your
7 testimony with anyone --

8 TAYLOR BUSH: Thank you.

9 THE COURT: -- because you're still testifying.

10 All right. Mr. Walker, I've given you some leeway.
11 I understand what you're trying to do, and I obviously
12 have allowed you to do it, but we're talking about
13 letters from 2007. I understand needing to lay the
14 history, but I think we need to lay it a little quicker,
15 because your jury is falling asleep. So, again, I think
16 you can do that, but kind of move it along a little bit.

17 Also, do we not have a laser pointer, or something
18 that these people can point to? Because I can tell you
19 this, when he's describing some of that on the maps, I'm
20 not even sure what you're referring to. So, you need to
21 do one of two things: you either need a laser pointer
22 for the witness; or, if they're going to come down, some
23 type of pointer, so they can understand what he's
24 talking about.

25 MR. WALKER: All right.

1 THE COURT: So, one of the two things. I was
2 looking for Rick to see. I know we've got some kind of,
3 you know, whatever.

4 COURT REPORTER: These do not work.

5 THE COURT: Those do not work on that, exactly,
6 which is the problem. So, I think what you're going to
7 have to do, when someone steps down, they're going to
8 have to use the stick and say this is what it is.

9 MS. LOHR: Yeah, we had the same problem last trial
10 I had.

11 THE COURT: I know.

12 MS. LOHR: And we had to come point at the screen.

13 THE COURT: It's so frustrating, I've got to tell
14 you. I don't know how we missed that when we did this,
15 but anyway. I think, Mr. Walker, for the jury to
16 understand what you're referring to, you're going to
17 need to have someone go down with a hard stick.

18 MR. WALKER: All right.

19 THE COURT: Okay?

20 MR. WALKER: Good.

21 THE COURT: All right. We're going to be at ease,
22 you all, for roughly ten minutes or so, until they're
23 ready to be back. Okay? That would be 11:00 o'clock by
24 that back clock. Okay?

25 OFF THE RECORD 10:51 A.M.

1 BACK ON THE RECORD 11:02 A.M.

2 BY THE COURT:

3 THE COURT: All right. Let's bring them in.

4 BAILIFF: You ready, your Honor?

5 THE COURT: Yes, sir.

6 BAILIFF: Jury is entering the courtroom, your
7 Honor.

8 JURORS ENTER COURTROOM 11:04 A.M.

9 THE COURT: Go ahead and sit down, ladies and
10 gentlemen. They are standing for you. I will tell you,
11 there is a bit of a debate going on in the circuit court
12 right now of whether or not the lawyers should stand or
13 not for that same purpose. But my opinion, I think, all
14 of the judges need to do it the same across the board,
15 so that everyone knows what the expectations are. So,
16 anyway, with that said, they're standing for you.

17 MR. WALKER: Thank you, your Honor.

18 THE COURT: Yes, sir.

19 TAYLOR BUSH, CONTINUE

20 DIRECT EXAMINATION, BY MR. WALKER:

21 Q When we took a break, I had just given you
22 Plaintiffs' Exhibit 11, which is a letter dated November
23 20, 2007. I believe that was admitted into evidence?
24 Is that -- over objection.

25 A Okay.

1 Q All right. Now, Mr. Bush, if you could, please
2 look at this letter with me. And this is going to be
3 the last one of these letters that we look at for
4 awhile, just to spare the jury. But it's dated when,
5 November 20th?

6 A 2007, yes.

7 Q And is this, again, addressed to whom?

8 A It's addressed to Ms. Frantz. I mean, I'm sorry,
9 it's addressed to Hillary Austin. Yeah.

10 Q And if we go down and we look at the second
11 paragraph, that one sentence that --

12 A Let me -- let me -- it's addressed from Hillary
13 Austin to Ms. Frantz.

14 Q All right. If we go down to the second, one-
15 sentence paragraph, what is the action that was taken?
16 What did the DRT, the Development Review Team, do?

17 A *At the unanimous vote by the members present,*
18 *DRT recommended that the project be deferred*
19 *until the following information is submitted.*

20 Q And I'd like to go over the three things right
21 under that, because we're going to get to them in
22 negotiations later. So, would you please feature those
23 three items right there, underneath. What is the first
24 one?

25 A *Applicant shall receive permission from the*

- 1 *Public Service Committee to abandon the road.*
- 2 Q And which road are we talking about?
- 3 A This is the 1,700 feet.
- 4 Q The historical road?
- 5 A The historical road.
- 6 Q What was your response to that?
- 7 A Well, we didn't feel we could abandon the road
- 8 until we had the variance.
- 9 Q Okay. What is the next one?
- 10 A Applicant -- applicant will need a variance
- 11 *from the ZBOA for the water line to be placed*
- 12 *in the river buffer.*
- 13 Q All right. And had you gotten a variance for that?
- 14 A No, we had not.
- 15 Q And then, what was the third one?
- 16 A Applicant shall receive permission from the
- 17 *owner of the fifty-foot access easement*
- 18 *leading into the property, from the property*
- 19 *owner, to place the water lines and other*
- 20 *utility lines within the easement to the*
- 21 *property to be developed.*
- 22 Q Who was the owner of the fifty-foot access easement
- 23 going into the property?
- 24 A David Pinckney.
- 25 Q And what was the status of the relationship with

1 David Pinckney at this time?

2 A Well, we -- we were having -- I'm trying to
3 remember the dates of when the sequence of events took
4 place, but I think we were already within our conflict
5 with them. We were having --

6 Q With a lawsuit pending, what did it mean you would
7 have to do in order to accomplish that third condition?

8 A Well, it was going to -- I mean, it was -- I don't
9 know what we would have had to have done. We probably
10 would have had to pay him something.

11 Q Okay. Now, let's go back to that litigation that
12 you introduced. Was there a trial in the road
13 litigation?

14 A There was.

15 Q Do you recall when that trial was?

16 A The -- let's see. Let me think about this just a
17 moment. I believe the trial started in '08. Yeah. So,
18 it would have been after this.

19 Q After the trial, but who was the judge who heard
20 that trial?

21 A Can I clarify something, though?

22 Q Go ahead.

23 A The trial was in '08, but it took a year to -- to
24 take care of the claims and cross-claims. So, it -- the
25 issue about the road litigation had already begun a year

1 before this.

2 Q Okay. Once you had your trial in 2008, did Judge
3 Dukes rule?

4 A He did not.

5 Q All right. At that point, were there negotiations?

6 A Well, Judge Dukes, he really became a mediator.

7 Q All right.

8 A He brought everyone into his chambers and started

9 --

10 Q Don't go into what he said.

11 A Okay. I'm sorry. I'm sorry.

12 THE COURT: Thank you.

13 BY MR. WALKER:

14 Q What did you come away with from those meetings?
15 What did you understand you needed to do?

16 A We needed to --

17 MR. ACHURCH: Your Honor, I --

18 BY MR. WALKER:

19 Q What did you embark on doing after those meetings?

20 A Following those meetings, we --

21 MR. ACHURCH: Your Honor, I just object to the
22 relevance of this --

23 THE COURT: Okay.

24 MR. ACHURCH: -- after the contract in dispute --
25 the contract is clear -- or the settlement is clear.

1 This is going through something that's parol evidence.

2 THE COURT: Okay. Okay.

3 MR. WALKER: I'm not asking what the other parties
4 did. I'm seeking to find out what he did in response.

5 THE COURT: Okay.

6 BY MR. WALKER:

7 Q As a result of all this, what did you do? You and
8 your lawyers do?

9 A Well, we began to work with the David Pinckney
10 family to come to some settlement.

11 Q All right. And we're going to come back to that,
12 because I want to hit on something that we haven't
13 covered. What did you have to do in order to have
14 permission to have docks on this property?

15 A We had to apply for a permit to the State.

16 Q Was a permit issued?

17 A It was.

18 Q Did --

19 MR. ACHURCH: Again, your Honor, this --

20 THE COURT: Okay.

21 MR. ACHURCH: -- is, again, it's not part of this
22 settlement agreement. The settlement agreement --

23 THE COURT: It's predating it, correct? Is that?

24 MR. ACHURCH: Pardon me?

25 THE COURT: It's predating it.

1 MR. ACHURCH: It predates it, and that's not part
2 of the settlement agreement that they sued the County
3 over.

4 THE COURT: Okay.

5 MR. WALKER: It is part and parcel that it was
6 executed simultaneously. And as Mr. Bush will testify,
7 it had a lot to do with the settlement, the two
8 agreements, and what the County was getting out of the
9 overall global settlement.

10 THE COURT: Okay. Well, we're not going to argue
11 this in front of the jury, but you can go ahead,
12 presuming it is relevant and presuming it does lead to
13 explaining the background and the context of the
14 settlement.

15 MR. WALKER: All right.

16 THE COURT: Subject to your objection, of course.

17 BY MR. WALKER:

18 Q Was a permit issued for the docks?

19 A Yes.

20 Q Was there an appeal?

21 A There was an appeal, yes.

22 Q Who appealed it?

23 A The County appealed it.

24 Q Was there a trial?

25 A There was a trial.

1 Q Where was that trial?

2 A Columbia.

3 Q Who was the judge?

4 A Judge Anderson.

5 Q Did he make a decision?

6 A He did.

7 Q Did he make any --

8 MR. ACHURCH: Your Honor, could we discuss a motion
9 now?

10 THE COURT: Sure. Okay. All right. Ladies and
11 gentlemen, of the jury, we're going to go ahead and take
12 a brief recess. Again, ladies and gentlemen, do not
13 discuss this case. It wouldn't be appropriate to do so,
14 and we'll be right back with you. Thank you. Leave
15 your books in your chairs.

16 JURORS LEAVE COURTROOM 11:12 A.M.

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: All right. Thank you.

19 ON-THE-RECORD BENCH CONFERENCE, OUT OF
20 PRESENCE OF JURORS. PRESENT: THE COURT,
21 MR. WALKER, MS. MONOC, MR. ACHURCH, MR.
22 BENDLE, MS. LOHR.

23 MOTION AND RULING:

24 THE COURT: Mr. Walker, will you give me, before I
25 hear his objection, will you give me the context in the

1 actual settlement agreement, what the docks have to do
2 with the settlement agreement.

3 MR. WALKER: Yes.

4 THE COURT: And the consideration and what was
5 given in exchange.

6 MR. WALKER: Yes.

7 THE COURT: All right.

8 MR. WALKER: The settlement agreement among the
9 road litigation settled directly the variance action
10 and --

11 THE COURT: Right.

12 MR. WALKER: -- the road case itself.

13 Simultaneously, with that, the County and my client
14 signed a settlement agreement of the dock case. And
15 that settlement agreement of the dock case included my
16 clients agreeing to vacate the order of Judge Anderson
17 that found that Beaufort County did not have standing,
18 and that was -- the County has said, we don't have any
19 consideration in this. But the two agreements were
20 signed the same day, and we will have testimony that,
21 that was an important consideration for the County.
22 They did not want to have precedent that said, you have
23 no standing to challenge a dock permit. Plus, they had
24 appealed it, but we're showing that it was part of the
25 consideration that we're wrapping up all the litigation.

1 We had three cases with the County. We had the
2 road case; we had the variance action; and we had the
3 dock appeal.

4 THE COURT: Okay.

5 MR. WALKER: On January 4th, Gary Kubic signed both
6 agreements.

7 THE COURT: Okay.

8 MR. WALKER: It was a global settlement, and you
9 can't just say, well, the dock case doesn't have
10 anything to do with it. We were making our peace with
11 the County as part of the consideration for everything.

12 THE COURT: Okay.

13 MR. ACHURCH: And your Honor?

14 THE COURT: Yes.

15 MR. ACHURCH: They attached, the plaintiffs in this
16 case, attached a copy of this settlement agreement to
17 the complaint. Okay?

18 THE COURT: To the complaint or to the settlement
19 agreement?

20 MR. ACHURCH: To this complaint.

21 THE COURT: Okay.

22 MR. ACHURCH: They attached a copy of the
23 settlement agreement, and said we're suing on this
24 contract. The docks have nothing to do with it. Okay?
25 It may be that was what they wanted to do. That might

1 be why they settled it, in their minds, but that's not
2 what's in this litigation. And when I say the County
3 didn't get anything from this settlement, other than we
4 got to quit playing ball, that's what we got out of it,
5 this settlement agreement.

6 THE COURT: Well, what was the point, then, of
7 having Judge Anderson vacate his order, saying that you
8 all don't have standing? The challenge.

9 MR. ACHURCH: That's a separate lawsuit, Judge.
10 That's a separate case.

11 THE COURT: But's it's all a part of the
12 settlement.

13 MR. ACHURCH: It is not, your Honor. If you read
14 --

15 THE COURT: It's not? It's not an exhibit to this?

16 MR. ACHURCH: It is not, no.

17 MS. LOHR: It specifically references two cases,
18 and that is not one of them.

19 MR. ACHURCH: It's not in this, it's not in this
20 settlement.

21 THE COURT: Okay.

22 MR. WALKER: But there could be a consideration for
23 an agreement. The County has said, well, we didn't get
24 anything out of this global settlement; it's just this.

25 THE COURT: Right.

1 MR. WALKER: We're --

2 MR. ACHURCH: I said we didn't get anything out of
3 this settlement. We're not talking about a global
4 settlement. The plaintiff wants to try to bring all
5 these other things in, but they sued on the a settlement
6 agreement.

7 THE COURT: Just so I understand, was the dock
8 issue resolved prior to the signing of this settlement
9 agreement that the breach of contract is over?

10 MR. WALKER: They were signed simultaneously. The
11 were settled simultaneously. Gary Kubic signed both the
12 dock settlement agreement and the settlement agreement
13 for the road and variance case the same day January 14.

14 THE COURT: Why weren't they all a part of the same
15 thing? I mean, is there a reason -- I mean, --

16 MR. WALKER: There were different parties to it.

17 THE COURT: Thank you. That's what I needed to
18 know.

19 MR. WALKER: The parties were --

20 THE COURT: Okay.

21 MR. WALKER: Everybody on the road litigation were
22 not parties to the other cases.

23 THE COURT: And I understand. And you had to have
24 all of them sign off on this. Which, I've seen the
25 signature line, so I understand that. That's what I

1 needed to know.

2 MR. WALKER: Yeah. And the County was represented
3 by Melinda Lucka in the dock case.

4 MR. ACHURCH: Right.

5 MR. WALKER: Not Mr. Achurch's firm, but they were
6 simultaneously done.

7 MR. ACHURCH: Right.

8 THE COURT: I understand. Okay.

9 MR. ACHURCH: But the Judge -- Judge, the other
10 agreements with the other parties to our litigation,
11 we're not -- they said specifically in that settlement
12 agreement, that's a separate contract. It's a separate
13 -- they could have done that with this other one, too,
14 and said, we're doing this, too. The other part is,
15 your Honor, is, the plaintiffs themselves appealed the
16 rule, the DHEC ruling. Okay? And they're not
17 mentioning that.

18 THE COURT: I think both sides did, but again,
19 that's what cross-examination is for.

20 MR. ACHURCH: Right.

21 THE COURT: And you both did.

22 MR. ACHURCH: But it's irrelevant, your Honor, to
23 this case and this contract. There is no relationship
24 between the dock case and this contract. It was signed
25 on the same day. And this goes maybe to the parties'

1 intentions, but he's talking about the parties'
2 intentions on some other contract, not the one he sued
3 on. And the parties' intentions are neither here nor
4 there when it's clear in the contract. There's no
5 dispute or ambiguity in our contract about the dock.

6 MR. WALKER: It's not being offered to show that
7 there was a dispute or ambiguity about the dock. It was
8 to show the intent was to resolve all issues.

9 THE COURT: All issues.

10 MR. WALKER: All issues. And it can be a separate
11 agreement. It doesn't have to be incorporated. It's
12 simultaneous. It shows that they were hand-in-hand, a
13 part of the overall consideration, and it goes, I think,
14 to the context of the whole settlement. And it provides
15 a basis, a reasonable basis, for our belief that we were
16 proceeding ahead, and the litigation was behind us.

17 MR. ACHURCH: That's not inconsistent, your Honor.
18 I agree to this -- the settlement agreement he sued
19 over, we all thought they were moving ahead. I mean,
20 that was -- they were free to go move ahead. I mean,
21 it's imperceivable to me how a dock settlement -- they
22 attached a copy of this settlement agreement to the
23 complaint, and now, they want to discuss another
24 settlement that the County was part of. That's not part
25 of the four corners of the complaint. It has nothing to

1 do with it. I mean, we didn't do discovery on dock
2 permits. I mean.

3 MR. WALKER: We're using it to show consideration,
4 if there's legal consideration. It doesn't have to be
5 within the agreement itself, and it's also being
6 reflective of the global settlement that was
7 accomplished by the parties. And we can present
8 testimony that the -- if the Court needs it -- that the
9 County was very interested in getting the road
10 litigation resolved. They're mainly getting this dock
11 order set aside, and it was part of the reason we were
12 able to get everybody to agree in the road litigation,
13 because we were going to wrap it all up.

14 MR. ACHURCH: Well, who cares why everybody agreed
15 in the road litigation? We agreed. We got a contract.
16 They could have sued globally. They chose not to sue,
17 your Honor, for, you didn't give me my development.
18 Okay? They didn't sue for that. They sued for
19 breaching this contract. That's what they sued for.
20 Breached this contract.

21 THE COURT: All right. Well, I'm going to let you,
22 to some extent, go into the dock issue, just because you
23 allege that it was all signed as part of the global
24 agreement. I mean, obviously, you've got the burden in
25 this case, so I'm not going to tie your hands. But I

1 think you need to kind of do it somewhat quickly.

2 MR. WALKER: I will go quickly through it.

3 THE COURT: Okay.

4 MR. ACHURCH: And your Honor, he does allege to you
5 in his argument that it's part of the global agreement,
6 but that was not part of this complaint.

7 MR. WALKER: It's not the contract that was
8 breached. So, we didn't allege it was breached. It was
9 part of the global settlement that it's a separate
10 agreement that was part and parcel in this settlement,
11 and I think you've got it now.

12 THE COURT: I think I understand, and I will also
13 say that it's a 2013 case. This thing has been beat,
14 and I think everyone should have had ample time to do
15 discovery on whatever issue they needed to do, and this
16 thing has been a long time coming. So, I don't think
17 it's any surprise that they're trying to bring this in.
18 Like I said, let's just move on with it, and get it up
19 there, and don't bore this jury. All right.

20 Rick, bring them back in.

21 END BENCH CONFERENCE.

22 BAILIFF: Ready, your Honor? Jury is entering the
23 courtroom.

24 JURORS ENTER COURTROOM 11:21 A.M.

25 THE COURT: All right. You all may be seated. You

1 may proceed, Mr. Walker.

2 TAYLOR BUSH, CONTINUE

3 DIRECT EXAMINATION, BY MR. WALKER:

4 Q Mr. Bush, I want to finish up real quickly about
5 the dock case. Did Judge Anderson issue a ruling?

6 A He did.

7 Q Did he rule on whether the County had standing?

8 A He ruled -- he ruled that they did not have
9 standing.

10 Q All right.

11 MR. ACHURCH: I renew my objection.

12 THE COURT: For the record.

13 MR. ACHURCH: Thank you.

14 THE COURT: Yes.

15 BY MR. WALKER:

16 Q Now, can we come back -- I want to bring us back to
17 the road litigation, and let's talk about those
18 discussions, particularly with respect to Agnes
19 Pinckney. At this time, had she been a -- was she
20 acting for John David Pinckney?

21 A She was. Yes.

22 Q Okay. And did you partake in the discussions with
23 her to try to conclude things regarding the road?

24 A In the nine -- in the 2009 settlement, I did, yeah.

25 Q Okay.

1 A And let -- our attorneys talked among them. I
2 didn't speak with her directly. Our attorneys spoke
3 with each other.

4 Q Did you authorize the settlement offers?

5 A I did.

6 Q Was there ultimately an agreement on what would
7 happen, what would satisfy her?

8 A There was.

9 Q Okay.

10 A So, in 2009, we settled on the matter with Ms.
11 Pinckney and her husband, and she imposed a lot of
12 conditions on us.

13 Q I'm going to show you that. Okay?

14 A Okay.

15 Q Did you reach a settlement agreement with Ms.
16 Pinckney?

17 A We did.

18 Q Was there a written settlement agreement that was
19 prepared and signed?

20 A Yes.

21 Q Is that Exhibit 74?

22 A It is.

23 Q Did you review it before it was signed?

24 A I did.

25 Q Did you go over it?

1 A I did, yes.

2 Q Okay. Does it accurately reflect what your
3 settlement was?

4 A Yes, it does. This is the -- this is the agreement
5 we -- we signed.

6 MR. WALKER: And we'd offer 74 into evidence.

7 THE COURT: Okay.

8 MR. ACHURCH: No objection, your Honor.

9 THE COURT: Without objection.

10 MR. WALKER: Thank you.

11 ITEM IDENTIFIED AS SETTLEMENT

12 AGREEMENT

13 MARKED PLAINTIFFS' EXHIBIT NUMBER 74

14 ADMITTED AS EVIDENCE.

15 BY MR. WALKER:

16 Q Now, tell us, rather than going through this thing
17 line by line, which is pretty tedious, what was going to
18 happen here? What went on in this settlement? What was
19 the transaction?

20 A Well, the transaction in this one was that she was
21 going to grant us an easement. Within this already-
22 recorded plat, she was going to grant us an easement to
23 use that road.

24 Q All right. Was there anything in this settlement
25 agreement about the development itself?

1 A Well, yes. She -- she wanted to be sure --

2 MR. ACHURCH: Your Honor, I'll object to *she wanted*
3 and those kind of things, comments from her.

4 A Well, --

5 THE COURT: Well, if it's in the document.

6 MR. ACHURCH: If it's in the document, that's fine,
7 I have no objection to it.

8 MR. WALKER: All right. And I will -- we can show
9 Page 3 of the document, please.

10 BY MR. WALKER:

11 Q Was there a section on docks?

12 A There was, yes.

13 Q And did you reach an agreement on the docks?

14 A We did.

15 Q All right. What did you agree to do on the number
16 of docks?

17 A Well, let me just re-familiarize myself.

18 Q And we can go to the top of Page 4, please. At the
19 very top.

20 A Okay. So, you want me to just read out of this?

21 Q What did you agree to? Was there a limit on the
22 number of community docks?

23 A A limit of four.

24 Q And in Part 3, if we could go down to Part 3,
25 please. It's on Page 4. You said you talked about --

- 1 is this the section that deals with the easement itself?
- 2 A Yes.
- 3 Q Does that address the easement?
- 4 A It does.
- 5 Q Now, how wide is that easement?
- 6 A Fifty feet.
- 7 Q All right. And let's go down to Part 6 underneath
- 8 that. What's that addressing?
- 9 A A conservation easement.
- 10 Q And what's a conservation easement?
- 11 A Well, it's just when land is set aside to -- in
- 12 conservation.
- 13 Q Did she make any obligation or commitment about
- 14 setting aside land in conservation?
- 15 A She did.
- 16 Q What was that?
- 17 A That she would set aside a piece of property behind
- 18 the four lots that we had purchased, and place that in
- 19 conservation.
- 20 Q Now, let's go to Item 7, please.
- 21 A Okay.
- 22 Q What does Item 7 address?
- 23 A Gated access.
- 24 Q What does it specifically address as to gated
- 25 access?

1 A That we would -- we would gate the property. That
2 it would be a private, gated development.

3 Q And 8, which addresses sewer?

4 A It does.

5 Q And what does it do?

6 A She wanted -- it says that we will agree to not
7 install off-site gravity sewer.

8 Q Had you ever planned a gravity sewer?

9 A We had.

10 Q And then, if you go down to 9, what was that about?

11 A 9 was about water. The Point tract shall be served
12 by water, provided by Beaufort-Jasper.

13 Q And did you also address storm water discharge in
14 Number 10?

15 A We did.

16 Q And what were you supposed to do there?

17 A That just, the discharge would have to be governed
18 by the Storm Water Management Practices Manual, Beaufort
19 County.

20 Q All right. Now, in terms of payment, what payment
21 was provided? And we'll go back to Page 2, please. And
22 if we could highlight the entire -- the settlement
23 payment, please. Do you see that, Number 2?

24 A I do.

25 Q All right. And what was the gross amount?

- 1 A One million three hundred thousand dollars.
- 2 Q Was it all to be paid at one time?
- 3 A No.
- 4 Q What was to be paid?
- 5 A 300,000 in cash or equivalent within thirty
- 6 business days after dismissal of the actions and
- 7 expiration of operable periods for appeal.
- 8 Q And when was the balance due?
- 9 A The balance was to be paid in cash, or its
- 10 equivalent, at the time of the closing of the loan by
- 11 Pinckney Point, LLC, for the development of the Point
- 12 tract.
- 13 Q Very good. And I'm going to now talk about one of
- 14 the other litigants, Dorothy Gnann. Was there a
- 15 settlement reached with Dorothy Gnann?
- 16 A There was.
- 17 Q Is Plaintiffs' Exhibit 75 a copy of the signed
- 18 settlement agreement with Ms. Gnann?
- 19 A It is.
- 20 Q And what is the date of that settlement agreement?
- 21 A August 2, 2010.
- 22 Q Did you review and approve it?
- 23 A I did.
- 24 Q Was she one of the litigants in the road
- 25 litigation?

1 A She was.

2 Q In order to get an overall settlement, was it
3 necessary to reach some sort of agreement with her, as
4 well?

5 A Yes, it was.

6 Q Is this that agreement?

7 A It is.

8 Q Did you review it and approve it?

9 A I did.

10 Q Did you sign it? Page 6?

11 A Yes, I did.

12 MR. WALKER: Your Honor, we would move 75 into
13 evidence.

14 THE COURT: It's in evidence.

15 MR. ACHURCH: No objection, your Honor.

16 THE COURT: Subject to your prior objection. Oh,
17 no objection. Okay.

18 ITEM IDENTIFIED AS SETTLEMENT
19 AGREEMENT BETWEEN DOROTHY GNANN AND
20 PINCKNEY POINT, DATED AUGUST 2, 2010
21 MARKED PLAINTIFFS' EXHIBIT NUMBER 75
22 ADMITTED AS EVIDENCE.

23 BY MR. WALKER:

24 Q Did you deed any property from Ms. Gnann in order
25 to have your right-of-way, the needed right-of-way, to

1 develop the property?

2 A No, we did not.

3 Q Did this agreement provide a payment to her and a
4 transfer of property?

5 A It did.

6 Q Tell us about that.

7 A Well, it was a narrow area to get onto the
8 property, and we were going to have to do some bulk-
9 heading one side. And so, in negotiating the payment to
10 her, she agreed to sell us a small portion of the
11 frontage of her lot, just so that we could avoid having
12 to build that bulkhead.

13 Q Okay. And if we could go to the very last page,
14 please, of this agreement. It's an illustration.

15 A Oh. Okay.

16 Q Do you see that?

17 A I do.

18 Q All right. We've got a pointer here, and I would
19 like you to come down and show us where Ms. Gnann's lot
20 is. And please orient the jury.

21 A Okay. These are the lots that we previously
22 purchased, and this is the area that was a platted
23 right-of-way, which is the area that was subject to
24 Agnes Pinckney's settlement. And then, this is Dot
25 Gnann's lot here.

1 Q And where was the property that you were going to
2 purchase?

3 A This little bit right in here.

4 Q And about how wide was that?

5 A I don't recall exactly.

6 Q All right.

7 A Thirty feet, maybe.

8 Q Okay. And what are we shown below? Is there a
9 road shown?

10 A Right here, it's --

11 Q It's a little difficult to see. Could you take the
12 pointer over the road.

13 And if we could expand that rectangle there,
14 please. Bring it down, please. If you could back off.
15 There you go.

16 Show us the road, please.

17 A Which road are you asking about?

18 Q First, show Pinckney Colony Road, and then, show
19 the intended improvements in the road.

20 A Okay. Well, this entire -- first of all, this
21 entire road is called Pinckney Colony Road, all the way
22 to the house.

23 Q Okay.

24 A In fact, it's on an 1825 map on the wall in the
25 hallway just that way.

1 Q Well, what are we seeing in terms -- is there a
2 road over to the right of Pinckney Colony Road? Does it
3 show that?

4 A This right here is Hayfield Road.

5 Q Okay. Now, if you go up a little bit, and I'm
6 going to just ask you, does this show improvements here?

7 A Yes, it does.

8 Q All right. And they're difficult to see on that
9 blowup, but what was that?

10 A We were putting a turnaround here for school buses.

11 Q Okay.

12 A And for emergency vehicles. So, it's a roundabout.
13 And then, we put a gate here, because we were now
14 required to do that, based on the settlement agreement.
15 And Dot Gnann specifically wanted to be inside the gate.
16 So, we put the gate out here instead of here, so that
17 she could be inside of the gate.

18 Q Okay. Thank you. You can return to the witness
19 stand. Oh, thank you.

20 How much were you going to pay Dot Gnann? And you
21 can go to Paragraph 2.

22 A \$215,087.00.

23 Q Was that due right away?

24 A No, it wasn't.

25 Q When was it due?

1 A It was due on the same terms as the second payment
2 to Ms. Pinckney, which was when we received our
3 development loan.

4 Q Now, if you go down to Number 3, what is that --
5 what subject is that?

6 A Docks.

7 Q And was there any concession as to Ms. Gnann about
8 the docks or use?

9 A There was. She wanted us to include in her
10 settlement access to a dock.

11 Q Now, could we highlight the second sentence there?
12 It would be the fourth line down, starting with the
13 fourth line down. Keep going down. All right.

14 Now, if you would read the second sentence.

15 A *PPLLC shall provide Gnann with the right*
16 *and/or title, depending on structure for*
17 *ownership created by PPLLC in its sole*
18 *discretion a boat slip in the first*
19 *community dock constructed by PPLLC at*
20 *the Point tract.*

21 Q Does it address whether or not she's going to have
22 to pay anything in order to have that?

23 A It does. She was not going to have to pay anything
24 for the boat slip, but she would have to pay to maintain
25 it.

1 Q Then, we go down to 4. And is 4 a provision -- if
2 you look at the first two sentences of 4, does that
3 address where you were talking about the location of her
4 property in relationship to the gate?

5 A It does.

6 Q All right. What does it say?

7 A That she would be inside the gate.

8 Q Okay.

9 A Behind the gate, it says.

10 Q And then, 5 addresses what subject?

11 A Utilities. And it says that she'll have the right
12 to connect to the utility services that we install on
13 the Point tract.

14 Q Thank you, Mr. Bush. All right. Did you also, at
15 this time, reach an agreement with the County?

16 Well, let me -- before we get to that. Did
17 Pinckney Point have the money to pay 1.3 million dollars
18 to Agnes Pinckney back in the middle of 2009, when you
19 signed this? Did you have that on-hand?

20 A No, we didn't have it on-hand.

21 Q When it came time, did you later change that, so
22 that you did have the money?

23 A We did, yeah.

24 Q What happened?

25 A We later reached a four-party settlement agreement.

1 And in that one, we changed the easement, and instead of
2 giving us an easement, she was selling us the land. And
3 so, because she was selling us the land, we had to -- we
4 had to pay her. And so, we paid her when that was
5 executed.

6 Q When you say we, how was that accomplished?

7 A It was -- we borrowed the money from an investor.

8 Q Did that investor set up an entity?

9 A They did.

10 Q What was it?

11 A Road, LLC.

12 Q Right there? Mr. Lanius?

13 A Yes.

14 Q All right. What did that allow you to do?

15 A The investor wanted to have the property put into a
16 separate entity with clear title, because they were
17 loaning the money to buy that specific piece of
18 property. And so, it allowed the investor to be able to
19 have security interest in that piece of property.

20 Q Was the piece of property, the road parcel, just
21 the Pinckney Colony Road?

22 A It was.

23 Q Was there anything dealing with Hayfield Road?

24 A Hayfield Road was included, a portion of it.

25 Q Mr. Bush, I have a blowup here of an aerial that

1 shows some lots. If you would step down and show what
2 has been referred to as the road parcel. And you can
3 use this.

4 A Okay. This is the portion that was part of the
5 1957 plat. And then, this is the portion that is
6 Hayfield Road, and the two combined make up the road
7 parcel.

8 Q Okay. And was that to be conveyed from whom to
9 whom?

10 A This was being conveyed from the David Pinckney
11 Estate, Agnes Pinckney, to Road, LLC.

12 Q All right. Thank you. And what are these lots
13 right there?

14 A These -- these are the four lots that we had
15 purchased some years prior. This is a conservation
16 easement area.

17 Q And where's Ms. Gnann's property?

18 A This is Ms. Gnann's property?

19 Q Okay. Now, let's move over to the County. Were
20 you able to accomplish a settlement with them?

21 A We -- we were. They were a part of the four-party
22 settlement agreement.

23 Q When you accomplished a settlement with them, what
24 was the scope of the overall settlement?

25 A It was all-inclusive. It was to take care of all

1 of the issues that the County was concerned about, the
2 issues that --

3 MR. ACHURCH: Your Honor, I'm going to object. The
4 scope of the settlement is within the settlement
5 agreement. And I object to that testimony.

6 BY MR. WALKER:

7 Q What was being settled?

8 A The -- I don't know how else to say it. It was all
9 of the matters that were a concern to all of the
10 parties.

11 Q How many cases were there at this point?

12 A There was the dock case. There was the zoning
13 appeal case. There was the road case.

14 Q What was the settlement to do?

15 A It was to resolve everything necessary for us to
16 develop the property.

17 Q Okay.

18 MR. ACHURCH: Your Honor, I object to not only
19 that, but the parol evidence rule. I mean, this is way
20 beyond the scope of the contract that they've sued over.

21 THE COURT: Okay. Well, if he can testify as to
22 what they were attempting to do.

23 MR. ACHURCH: And I'd also object to the testimony,
24 your Honor, about his intentions and things like that,
25 that are outside of the contract. It's parol evidence.

1 THE COURT: Okay.

2 MR. ACHURCH: So, in addition to being irrelevant,
3 parol evidence, as well.

4 THE COURT: Subject to your objection.

5 BY MR. WALKER:

6 Q What is Exhibit 78, that I've just handed you?

7 A This is the big -- the four-party settlement
8 agreement.

9 Q Was this signed by the County?

10 A Yes.

11 Q If you'd go to Page 9. Does that reflect a
12 signature by the County, and are those the signatures of
13 everybody else that was a party to it?

14 A This particular copy doesn't have all the
15 signatures.

16 Q If you turn the pages, do you see them, the back
17 and front page?

18 A I do. They're on the -- the other page, yes.

19 Q All right.

20 MR. WALKER: Your Honor, we would offer Plaintiffs'
21 Exhibit 78 into evidence.

22 THE COURT: Any objection?

23 MR. ACHURCH: I'm trying to -- if I could --

24 MR. WALKER: Sure.

25 MR. ACHURCH: Your Honor, Counsel has confirmed

1 with me that this is the original, and that's -- so,
2 therefore, no objection.

3 THE COURT: Okay. Without objection, that's Number
4 78.

5 ITEM IDENTIFIED AS SETTLEMENT
6 AGREEMENT BETWEEN BEAUFORT COUNTY,
7 ZBA, PINCKNEY POINT, PINCKNEY,
8 DOT GNANN, ROAD
9 MARKED PLAINTIFFS' EXHIBIT NUMBER 78
10 ADMITTED AS EVIDENCE.

11 BY MR. WALKER:

12 Q If we could please put it up on the screen, so the
13 jury can see the cover page. And if we could go down to
14 the introductory paragraph, please.

15 Does this introductory paragraph go over all the
16 parties to this agreement, everybody who signed it?

17 A It does.

18 Q Could you tell us by reading it who is party to
19 this settlement agreement.

20 A It's by and among Beaufort County, a political
21 subdivision of the State of South Carolina; the Zoning
22 Board of Appeals for Beaufort County; Pinckney Point,
23 LLC; Agnes F. Pinckney, Individually as a Guardian; and
24 Dorothy Gnann; and Road, LLC.

25 Q So, if we count those up, are there actually six

1 parties?

2 A One, two, -- yes.

3 Q All right. Does this contain a provision
4 specifically related to the road action? And I'm going
5 to direct your attention to Page 2, at the bottom of
6 Page 2.

7 A It does.

8 Q Was the road action settled?

9 A It was.

10 Q With the County?

11 A Yes.

12 Q And what I'd like to do is go over these provisions
13 that are part of the settlement of the road action with
14 the County. Could you do that with us, by reading that,
15 and letting the jury follow along.

16 A Just read Paragraph 3?

17 Q Yes, sir.

18 A Road action. Beaufort County, Pinckney,
19 Gnann, and PPLLC, agree to settle the
20 road action, pursuant to the terms of this
21 agreement.

22 Beaufort County agrees to allow the
23 improvement of the road parcel as hereinafter
24 defined in the same manner as described in
25 the ZBOA settlement in Paragraph 2 above,

1 and as depicted on Exhibit B-1, attached
2 hereto, and made a part hereof.

3 Plans to improve the road parcel shall
4 be submitted to and must be approved by the
5 Beaufort County Engineer and the Developmental
6 Review Team. Such plans shall provide that
7 PPLLC shall improve this portion of the road
8 consistent with the ZBOA settlement and the
9 Agnes Pinckney settlement agreement, as
10 hereinafter defined, and in conformance with
11 plan depicted in Exhibit B-1.

12 To the extent a variance shall be
13 required from the river buffer and river
14 setback requirements of Section 106-1845 of
15 the ZBSO for the construction of the road
16 parcel, and utility infrastructure for the
17 development of the Point tract as
18 contemplated herein, Beaufort County hereby
19 agrees that such a variance is hereby approved,
20 and no further variance from Beaufort County
21 shall be required, so long as any encroachment
22 into the buffer or setback is minimized to the
23 extent reasonably possible.

24 Q Now, I'd like to move on to Paragraph 2, please.

25 A Subject to the approval by Beaufort County

1 of the plans to improve the roadway that
2 is subject the road action and the variance
3 action, the parties hereto agree that the
4 road parcel is and shall be a private road
5 for the use and benefit of those parties
6 described in the right-of-way and easement
7 agreement hereinafter defined.

8 Further that the parties hereto agree
9 that, notwithstanding any claim, allegation,
10 submission, or testimony in either the road
11 action or the variance action, nor any
12 hearing or meeting related hereto, there is
13 no, nor has there been, any dedication of or
14 intent to dedicate to the County the roadway
15 that is subject to the actions.

16 PPLLC's, agreement to the aforesaid is
17 specifically contingent on full and complete
18 performance by Beaufort County, the Board,
19 Pinckney, and Gnann under this agreement.

20 Q Did the settlement agreement contain a draft
21 consent order to be submitted to the judge? If you go
22 to, it would be the next to the last page, that has the
23 Bates Number at the top, 50.

24 A Let's see. Okay.

25 Q Show the text of that, please. Was that one of the

1 exhibits that everybody agreed to?

2 A It is.

3 Q And what does that consent order state? Starting
4 with *whereas*.

5 A *Whereas, the parties to the above action,*
6 *by and through their duly authorized counsel*
7 *of record, have advised the Court that they*
8 *have reached an agreed settlement by way of*
9 *compromise, and have agreed to jointly*
10 *move for dismissal, pursuant to Rule 41 SCRCP.*

11 Q And what does it say underneath that?

12 A *Now, therefore, it is hereby ordered,*
13 *adjudged, and decreed that the plaintiffs'*
14 *claims as stated in the above-captioned*
15 *matter are hereby dismissed with prejudice.*

16 Q At this point, I'd like to talk about the variance
17 action that was settled, and turn your attention to what
18 was Exhibit B to the settlement agreement, that starts
19 with the numbering at the top of the page, in the right
20 corner of 13.

21 A Okay.

22 Q All right. Do the pages, that and the next two
23 pages, include the settlement of the Zoning Board of
24 Appeals appealed with the County, between Pinckney
25 Point, LLC, and the County?

1 A It does.

2 Q If we go down to Variance, which is at the bottom,
3 I'd like to go over that with you. All right. And if
4 we could talk about what you and the County agreed to in
5 the variance portion. And what I'd like you to do,
6 rather than have you repeat what you understood and
7 said, if you would just read this one paragraph dealing
8 with the variance.

9 A As shown in the filings with the ZBOA,
10 Pinckney Colony Road enters the property
11 currently within the river buffer/river
12 setback and runs within and along the same
13 for a distance of approximately 3,483 linear
14 feet.

15 As shown in this application, PPLLC
16 proposes to improve a portion of Pinckney
17 Colony Road at the point of entry to the
18 property, and realign the right-of-way to
19 remove it from the river buffer/river setback
20 as soon as feasible, given the land area
21 available, and the unique shape of the property.

22 The proposed revised routing shall reduce
23 the existing road impact of the river buffer/
24 river setback by greater than 95 percent.

25 PPLLC, shall use pervious paving for all road

1 improvements within the river buffer/river
2 setback.

3 To restore the environmental health and
4 stability of the river buffer/river setback
5 and the natural resources protected thereby,
6 PPLLC, further shall restore the natural grade
7 and provide a re-vegetation plan for the area
8 for which the road is to be relocated. Such
9 re-vegetation shall conform to that proposed
10 in the application.

11 Q Now, I would like you to go down -- do you see
12 where it says Agreement, right under that?

13 A I do.

14 Q I'd like you to go to the second paragraph under
15 Agreement, because it carries forward some of the ideas
16 you were just talking about. And if you would read
17 that, too, and go over it with us.

18 A The second paragraph?

19 Q Under Agreement. Yes, sir.

20 A Okay.

21 The improvement and perpetuation of
22 the road in its current location in the
23 river buffer/river setback, thwarts,
24 rather than advances, the County's policy
25 of protecting and preserving these

1 environmentally sensitive areas. Granting
2 the variance serves to reduce the distance
3 of the road in this environmentally
4 sensitive area from 3,483 linear feet to
5 just 130 linear feet.

6 Moreover, PPLLC shall use pervious
7 paving for the portion that remains in the
8 river buffer/river setback. Since the more
9 damaging plan of leaving and improving the
10 roadway in its current location would be
11 granted as a matter of right, the grant of a
12 variance serves to accomplish considerably
13 greater protection of this environmentally
14 important area, and is more in keeping with
15 the County's comprehensive plan.

16 Q And then, finally, the paragraph on the bottom.

17 A The relocation of the existing road serves to
18 improve the quality of the river buffer and
19 natural resources protected thereby. The
20 existence of an unimproved road within the
21 river buffer is potentially more detrimental
22 to the environment. The proposed relocation
23 of the road includes the construction of
24 storm water drainage facilities that virtually
25 eliminate storm water runoff from the property

1 into the critical area marshes.

2 This agreement, therefore, serves to
3 benefit the County by ameliorating the negative
4 effects of a non-conforming road currently
5 located and maintained in the river buffer/
6 river setback.

7 Q Thank you. And if we go to the next page, which is
8 Page 3. I want you to go over the first half of this
9 Page 3 with us, starting at the top, starting with
10 finally.

11 A Finally, this agreement results in the
12 termination of litigation over denial of the
13 variance. The litigation of this appeal
14 through the trial and appellate courts could
15 well take two to three years. By entering
16 this settlement, the parties save significant
17 attorneys' fees and costs that would be
18 incurred as a result of protracted litigation.

19 In sum, the granting of the variance on
20 the terms herein shall significantly reduce
21 negative impacts along the river buffer/river
22 setback on the property, and restore
23 approximately 3,353 linear feet of road,
24 i.e. 3,483 linear feet, minus 130 linear
25 feet, within the river buffer/river setback

1 to natural land, and eliminate County
2 maintenance costs for the existing dirt
3 road, and eliminate the payment of significant
4 attorneys' fees that the County would incur
5 if the matter were litigated to conclusion,
6 and replace the uncertainty of outcome of the
7 litigation with a resolution that benefits
8 the County financially, as well as promote
9 an important County environmental policy.

10 Q And if we go two pages over, there's an
11 illustration. Do you have the illustration?

12 A I do.

13 Q And how does that relate to the one that we were
14 looking at earlier that was submitted for your variance
15 application?

16 A It's -- it's very similar.

17 Q All right. You mentioned that -- well, we can go
18 to the next part of this exhibit, Exhibit B-1. And if
19 you would go two pages along to Page 19, at the top. Is
20 that road alignment what we were looking at earlier?

21 A It is.

22 Q All right. As a result of this settlement, was the
23 agreement with Agnes Pinckney from 2009 modified?

24 A It was.

25 Q Is Exhibit 76 that amendment, the first amendment?

1 A It is.

2 Q And if we turn to Page 4, was that signed?

3 A Yes.

4 Q Was it signed the same day as the big settlement
5 agreement that we're talking about? What day was it
6 signed?

7 A It was signed on January the 14th, so.

8 Q What was the main thing accomplished by this? What
9 changed? the main thing that changed.

10 A That she was now selling us the land. Instead of
11 an easement, she was actually selling us the property.

12 Q And was there also a change as to the order
13 service, if you went down to Number 6? And could we
14 have the agreement?

15 Well, let me -- I think we moved it -- we moved it
16 into evidence, and I forgot to do it. I meant to do it.

17 THE COURT: Okay. All right. Any objections to
18 this coming into evidence?

19 MR. ACHURCH: No objection.

20 THE COURT: Without objection? Okay.

21 ITEM IDENTIFIED AS MODIFIED AGREEMENT
22 WITH AGNES PINCKNEY, SIGNED
23 JANUARY 14, 2011
24 MARKED PLAINTIFFS' EXHIBIT NUMBER 76
25 ADMITTED AS EVIDENCE.

1 BY MR. WALKER:

2 Q Now, if you would go down to Page 2, please. Did
3 this modify the provision as to water service in Number
4 6?

5 A Yes. We were to provide her with a water tap.

6 Q All right. Now, at the same time that this was
7 being resolved, what happened with the dock litigation?

8 A It was resolved the same day.

9 MR. ACHURCH: Your Honor, I just -- my objection.

10 THE COURT: Subject to your prior objection.

11 BY MR. WALKER:

12 Q What were the main features of that settlement with
13 the County over the dock litigation?

14 A During the course of the litigation, the judge
15 ruled that the County didn't have the right to file the
16 -- the appeal to the docks. They didn't have governance
17 over those waters that the docks were in. And so, he
18 ruled that they didn't have standing, and in that -- in
19 my view, is what made the County --

20 Q Let's not get into what the County did.

21 THE COURT: Thank you.

22 BY MR. WALKER:

23 Q Just tell us what happened.

24 A Okay.

25 MR. ACHURCH: And again, I still have my running

1 objection, your Honor.

2 THE COURT: Yes.

3 MR. ACHURCH: Thank you.

4 BY MR. WALKER:

5 Q What happened?

6 A So, in this settlement, we agreed to ask the judge
7 to reverse that order.

8 Q Do you know whether or not that settlement
9 agreement was signed the same day, January 14?

10 A That's my -- that's what I recall.

11 Q All right. This is Plaintiffs' Exhibit 14 in the
12 notebook. Do you recognize that?

13 A I do.

14 Q What is this?

15 A This was the -- the multi -- mutual release and
16 settlement agreement.

17 Q Who signed on behalf of Pinckney Point Page 5?

18 A I gotta tell you, I'm not sure.

19 Q All right.

20 MR. WALKER: We'd offer Plaintiffs' 14 into
21 evidence.

22 MR. ACHURCH: I object to it on relevance, your
23 Honor.

24 THE COURT: Thank you. All right. It's in
25 evidence, subject to your objection.

1 ITEM IDENTIFIED AS MUTUAL RELEASE
2 AND SETTLEMENT AGREEMENT PINCKNEY
3 POINT AND COUNTY DOCK LITIGATION,
4 MARKED PLAINTIFFS' EXHIBIT NUMBER 14
5 ADMITTED AS EVIDENCE.

6 BY MR. WALKER:

7 Q Now, I want to go back to one last thing on the
8 Dot's -- on the major settlement with all the parties.
9 That included a court order, consent order. Was that
10 signed by Judge Dukes? Do you recall?

11 I'll let you look at this Exhibit 97.

12 A It's not -- it's not signed.

13 Q The copy to the settlement agreement is signed.

14 A Oh, I'm sorry.

15 Q If you could -- I'm going to let you look at the
16 later one. I've given you Plaintiffs' Exhibit 97. Do
17 you recognize that?

18 A I do.

19 Q What is that?

20 A This was the copy to the settlement agreement.

21 Q Is it signed?

22 A It's signed.

23 MR. WALKER: Your Honor, we would offer this into
24 evidence.

25 MR. ACHURCH: Without objection, your Honor.

1 THE COURT: It's in evidence, without objection.

2 ITEM IDENTIFIED AS CONSENT ORDER

3 COUNTY VERSUS PINCKNEY

4 MARKED PLAINTIFFS' EXHIBIT NUMBER 97

5 ADMITTED AS EVIDENCE.

6 BY MR. WALKER:

7 Q May we have it on the screen, please.

8 Is this the identical order to the one that's
9 attached to the settlement agreement, to the best of
10 your knowledge?

11 A To the best of my knowledge, yes, it is.

12 Q And if we go down to Number 2, what does it decree?

13 A *That the unpaved portion of Pinckney Colony*
14 *Road is a private road.*

15 Q Thank you. Now, I want to turn your attention to
16 your bank. Who was your bank?

17 A BB&T.

18 Q Had Pinckney Point been able to make all of the
19 payments?

20 A We had never missed a payment.

21 Q All right. At some point, did the note become due?

22 A It did.

23 Q Was Pinckney Point able to pay it?

24 A No.

25 Q How much was owed, just roughly?

1 A Eight million dollars.

2 Q What did the bank do?

3 A They initiated foreclosure.

4 Q Okay.

5 A The foreclosure process.

6 Q Was it ever -- did Pinckney Point defend that
7 foreclosure proceeding?

8 A We did.

9 Q Was it ever Pinckney Point's intent not to
10 ultimately pay the bank?

11 A No, it was not. I mean, it was not our intent to
12 not pay the bank. We intended to pay them.

13 Q At some point, did a new player come on the scene?

14 A Yes.

15 Q In early 2013?

16 A Yes.

17 Q I'm sorry. Not 2013. 2011?

18 A That's correct, yes.

19 Q What happened?

20 A We were notified by a group out of Atlanta, Georgia
21 that they had bought the loan from the bank, and that
22 they were now our new lender.

23 Q Did you meet with them?

24 A We did. They asked us to come to Atlanta right
25 away, so me and John Kunkel flew up to Atlanta, and went

1 and met with them.

2 Q As a result of your discussions with them, did you
3 reach some agreements with them?

4 A We did. We eventually reached an agreement. It
5 was important to them -- you want me to describe that
6 agreement?

7 Q Yeah. Yeah.

8 MR. ACHURCH: Your Honor, the importance of that, I
9 don't think is germane. It's hearsay.

10 A Okay.

11 MR. ACHURCH: Whatever the agreement they came to.

12 THE COURT: He can testify as to what the agreement
13 was.

14 A Okay.

15 BY MR. WALKER:

16 A That we would deed the property back over to them,
17 and that, in exchange for that, they would give us a
18 purchase and sell agreement to buy it back after a
19 period of time.

20 Q Did all that get memorialized?

21 A It did.

22 Q In documents?

23 A Yes.

24 Q Did you enter an option agreement -- when I say
25 you, Pinckney Point, enter an option agreement with

1 Equity Resource Partners?

2 A Yes, we did.

3 Q This is Exhibit 79. If you can take a second to
4 thumb through it. Does it appear to be the option
5 agreement?

6 A It does.

7 Q And I'm going to ask you to go to Page -- on the
8 option agreement, it would be Page 8, Mr. Bush. And if
9 you go up, and do you see when it was signed, above the
10 signatures?

11 A The 21st day of December, 2011.

12 MR. WALKER: We would offer Plaintiffs' Exhibit 79
13 in the opinion agreement.

14 MR. ACHURCH: No objection, your Honor.

15 THE COURT: Without objection.

16 ITEM IDENTIFIED AS OPTION AGREEMENT

17 BETWEEN EQUITY RESOURCE PARTNERS

18 AND PINCKNEY POINT, DATED

19 DECEMBER 11, 2011

20 MARKED PLAINTIFFS' EXHIBIT NUMBER 79

21 ADMITTED AS EVIDENCE.

22 BY MR. WALKER:

23 Q If we could, get that on the screen, please.

24 Now, if you go down to the first main paragraph.

25 It's numbered Number 1, please. Does this get into the

1 specifics of your option and how you could buy the
2 property back?

3 A It -- it -- it outlines the amount of money and the
4 term of the option.

5 Q Okay. And since there's been some discussion about
6 this, I would like to go over the agreement. If you
7 could read us this main provision in Number 1.

8 A ERP grants to Pinckney the option to purchase
9 the real property for a period of twelve months,
10 for a purchase price of six million five
11 hundred thousand dollars, the purchase price.

12 The period from the date of this agreement
13 hereinafter defined through and including August
14 31, 2012, shall be known as the first option
15 period.

16 Notwithstanding anything contained
17 herein, the first option period shall expire
18 no later than August 31, 2012.

19 Notwithstanding the foregoing, in the
20 event ERP, in its sole and absolute discretion,
21 determines it must commence a foreclosure
22 action on the real property, pursuant to
23 the terms of Section 7.1 and 7.2 of the
24 forbearance agreement, the cost of such
25 action, together with any and all attorneys'

1 fees and expenses actually incurred, as well
2 as any and all amounts paid to parties claiming
3 a lien of any type for surrender of their lien
4 shall be added to the purchase price set forth
5 hereinafter at any closing provided for under
6 the terms of this option agreement.

7 Q And if we go to 2, does Paragraph 2 talk about --
8 did you have to make a payment for that option period?

9 A We did.

10 Q Does Paragraph 2 talk about that?

11 A It does.

12 Q And what was the amount you had to pay to get that
13 option, the right to buy the property back, by August
14 31, 2012?

15 A \$125,000.00.

16 Q Then, if we go down to Paragraph 3, does that talk
17 about what you would have to pay to get an extension of
18 the option?

19 A Yes, it does.

20 Q How much would you have to pay?

21 A \$375,000.00.

22 Q Did Pinckney Point pay the \$125,000.00 for the
23 first option?

24 A Yes.

25 Q Why did you enter the option agreement with Equity

1 Resources?

2 A They wanted us to deed the property back over to
3 them to take -- they wanted to take title to the
4 property. And so, we wanted to -- to be able to buy it
5 back.

6 Q And did you actually do a deed to them with the
7 property?

8 A Prob -- I'm sure we did.

9 Q For the property.

10 A I'm sure we did. I can't testify to that with
11 certainty.

12 Q I've given you Plaintiffs' Exhibit 91, which is an
13 indentured deed, a limited warranty deed, of December
14 30, 2011. Do you see that?

15 A I do.

16 Q Does this appear to be the deed?

17 A It does.

18 Q Did you believe -- or, what were your feelings
19 about whether you could accomplish your permitting and
20 take it down by August 31, 2012, get it back?

21 A We felt -- we felt really good about it. We had
22 signed a settlement agreement with the County and all
23 other parties, and we felt like the road was clear now
24 for us to be able to finish up all of our other -- all
25 the other things that needed to be finished up in order

1 to develop the property.

2 Q All right. Did you continue with the permits?

3 A We actually -- we re-engineered the property, the
4 property. We had to -- we had previously engineered the
5 project as a sewer system. And so, when the County
6 asked us to go back and do it as a septic, we had to go
7 get septic permits. So, we went and got a master permit
8 from the State. It took a long, long time to get that.
9 We had to go out and test every individual lot, do soil
10 tests, locate the septic tank, and then, get the State
11 to approve a master septic tank permit. And so, we had
12 that done, and that was complete.

13 Q And who did you say had helped you with that?

14 A Lorick Fanning.

15 Q And who were the permitting people who approved it?

16 A It was the State. It was DHEC, I believe.

17 Q Okay.

18 A So -- so, we had -- but we didn't want to re-
19 engineer the project until we had a settlement with the
20 County. 'Til we could get all of these other things
21 settled, we didn't want to go spend the money to re-
22 engineer the project again. So, once we had signed the
23 settlement agreement, we hired the engineer to go
24 engineer it as a septic system project.

25 Q Did you, during this time, have any obligation to

1 pursue permits under your agreements with Equity
2 Resources Partners?

3 A We did agree that we would continue to pursue the
4 permits, yes.

5 Q Did you continue to submit conceptual site plans
6 and try to get conceptual site plan approval from the
7 County?

8 A We did.

9 Q All right. Exhibit 112 is a site plan prepared by
10 Whitmer Jones Keefer, dated July 12 -- July 16, 2011.
11 Did you see this? Did you approve this?

12 A I did.

13 Q Was this submitted to the County?

14 A It was.

15 Q Okay.

16 MR. WALKER: Your Honor, we would move this into
17 evidence.

18 MR. ACHURCH: No objection, your Honor.

19 THE COURT: Without objection, exhibit is in
20 evidence.

21 ITEM IDENTIFIED AS SITE PLAN/
22 CONCEPTUAL MASTER PLAN PREPARED
23 BY WHITMER JONES KEEFER, DATED
24 JULY 16, 2011
25 MARKED PLAINTIFFS' EXHIBIT NUMBER 112

1 ADMITTED AS EVIDENCE.

2 ITEM IDENTIFIED AS LIMITED WARRANTY

3 DEED, DATED DECEMBER 30, 2011,

4 MARKED PLAINTIFF'S EXHIBIT NUMBER 91,

5 ADMITTED AS EVIDENCE.

6 BY MR. WALKER:

7 Q And we're going to use this machine for this one.

8 Is that the site plan we were just talking about?

9 A Yes, it is.

10 Q Is it Exhibit 112?

11 A Yes.

12 Q Is it generally the same concept that you've used
13 all along?

14 A It is. From the very beginning, yes.

15 Q All right.

16 A Generally, the same concept.

17 Q Now, does this show the community docks?

18 A It does.

19 Q And if I give you this pointer, could you show us
20 where these docks are?

21 A Here, here, here, and here.

22 Q All right.

23 A And here.

24 Q Was the one on Jackass Island contingent?

25 A It was contingent on, as I recall, our ability to

1 demonstrate we actually had title ownership to that
2 island.

3 Q All right. Is there anything else new or about
4 this site plan? Or was it just basically a later
5 version of what you had been planning?

6 A Well, all of the plans since '05 are very similar.
7 It was a ring road with perimeter lots and interior
8 lots. We changed the configuration slightly, just based
9 on advice from land planners, and -- but the concept,
10 access point, everything is very similar.

11 Q Have lots been staked and surveyed?

12 A We had to, to get the septic tank master plan --
13 the master septic tank permit.

14 Q Did anything else have to happen on the ground in
15 order to do that? Was there soil testing?

16 A Yes, they had to do individual soil tests for every
17 single lot as a part of that application to the State.

18 Q All right. Thank you. I'm giving you what's
19 Plaintiffs' Exhibit 111. It's a letter from the
20 Planning Department, Zoning and Planning, August 23,
21 2011. Do you recall receiving this letter, or reviewing
22 the letter? Was it provided to you shortly thereafter?

23 A It was. Yes.

24 Q Who is the letter from?

25 A The letter is from Hillary Austin to Dan Keefer.

1 Q And who is Mr. Keefer?

2 A He's our land planner.

3 Q Okay. And did you review this soon after you
4 received it?

5 A I did.

6 Q Is this a true and accurate copy?

7 A It is.

8 Q All right.

9 MR. WALKER: We'd offer 111 into evidence.

10 MR. ACHURCH: No objection, your Honor.

11 THE COURT: Without objection, 111 is in evidence.

12 ITEM IDENTIFIED AS LETTER FROM
13 HILLARY AUSTIN, PLANNING DEPARTMENT,
14 ZONING AND PLANNING, TO DAN KEEFER,
15 DATED AUGUST 23, 2011,
16 MARKED PLAINTIFFS' EXHIBIT NUMBER 111
17 ADMITTED AS EVIDENCE.

18 BY MR. WALKER:

19 Q All right. Mr. Bush, if you would go to the second
20 sentence in this letter. It has some typed letters in
21 capitals underlined. Would you read that sentence.

22 A *After a unanimous vote by the members present,*
23 *the DRT recommended the project be approved,*
24 *with the following conditions.*

25 Q Approved. Had it been approved before?

1 A No.

2 Q And are we talking about final or something else?

3 A This is a conceptual site plan approval.

4 Q Then, does it go through some conditions?

5 A It does.

6 Q Were the first four conditions concerning at all to
7 you?

8 A No, they were just minor things.

9 Q How about when we get to the last one that was
10 described?

11 A Here, they were asking us to get individual septic
12 tank permits for every lot.

13 Q Okay. What does the sentence say?

14 A It says:

15 *At final review, the applicant shall*
16 *submit septic system permits from DHEC.*

17 Q Did that present any complications?

18 A Well, we already had a master plan for the whole
19 project, and the master plan had reviewed every single
20 lot. And it was concerning that we would have to go get
21 an individual permit now for each individual lot.

22 Q Was that brought to the attention of the County?

23 A Yes.

24 Q And who is the principal person who handled that
25 for you with the County?

1 A We had to hire a lawyer to handle it. It was --
2 got into the legal realm, and so we hired Walter Nester
3 with McNair Law Firm.

4 Q Was it ultimately resolved?

5 A It took several months, but yes, eventually, it was
6 resolved.

7 Q During this time, we've talked about different
8 permits that you were attempting to get. Did you
9 continue to pursue them?

10 A Yes. We never stopped doing that.

11 Q When you did the option agreement, did you prepare
12 a schedule of permits, a table of permits, for ERP?

13 A I did.

14 Q I'm giving you Exhibit 80. Is this one of the
15 schedules to the option agreement that includes the
16 permits?

17 A I'm not sure if it was a schedule to the agreement
18 itself. It might have been, but it certainly is
19 something that I would provide them from time to time.

20 Q All right. What does it show?

21 A This is just a list of all the approvals necessary
22 to develop various aspects of the community, the lots,
23 the entryway, the amenities, the docks.

24 MR. WALKER: Your Honor, we'd offer Plaintiffs'
25 Exhibit -- well, let me ask you this. Did you prepare

1 this?

2 A I did, yes.

3 MR. WALKER: We'd offer 80 into evidence.

4 MR. ACHURCH: No objection, your Honor.

5 THE COURT: Without objection, it's in evidence.

6 ITEM IDENTIFIED AS OPTION AGREEMENT

7 EXHIBIT B, LISTING PERMITS AND APPROVALS

8 MARKED PLAINTIFFS' EXHIBIT NUMBER 80

9 ADMITTED AS EVIDENCE.

10 BY MR. WALKER:

11 Q Now, could we go down the list. The first column
12 on the left says *amenities*. Do you see that?

13 A I do.

14 Q And was it essential to site plan approval to have
15 all those approvals for the amenities?

16 A I don't think -- no, I don't believe so. I think
17 the site plan approval from the County was primarily
18 focused on the lot development.

19 Q Okay. Could we move down to the lot portion of the
20 table of permits. All right. Does this go over all the
21 permits and approvals you needed to get?

22 A It does.

23 Q And you don't need to go over all of them, but
24 would you tell us which ones remained at the time this
25 was done at the end of 2011.

1 A Well, there was -- the water system permit was
2 pending.

3 Q Underneath that, it says what?

4 A Preliminary site plan approval.

5 Q What's the status of that?

6 A It says, *concept DRT approval with conditions.*
7 *The next one is final site plan approval.*

8 *Beaufort County DRT not started, 90*
9 *days, minimum.*

10 *Memorandum of agreement with SHPO --*
11 *That's a State Department --*
12 *-- is complete. Historic site survey is*
13 *complete.*

14 Q Then, we come down, drop down. We don't have to go
15 over all the not requested's, but let's go down to the
16 records verification.

17 A It's complete. Construction placard, that's not
18 requested. That comes, following the issuance of a
19 development permit.

20 Storm water permit with OCRM was complete. Septic
21 permit master plan approval issued. Septic permit,
22 individual lots not requested. It would be --

23 Q Was this done before the Beaufort County request?

24 A I don't know if it was or not.

25 Q Okay.

1 A You know, this may have been just ongoing and done
2 after they had agreed that we didn't have to do that.

3 Q All right.

4 A Septic permit, individual lots will be requested by
5 an individual buyer. Right-of-way abandonment not
6 requested. Estimated time, 90 days. Grading permit
7 pending. Need final DRT approval.

8 Plat design in process. Follows concept DRT.
9 Preliminary plat approval not requested. Basic approval
10 is achieved, via concept DRT. Plat recording not
11 requested. Follows issuance of development permit.

12 Gas, cable, and electricity issued. Letters of
13 intent in hand. Fire marshal approved. Water system
14 permit issued. Utility encroachment permit issued.
15 Storm water permit, OCRM, complete.

16 Q Was that an accurate status on all those permit
17 requests at the time you did it?

18 A I'm sure it was.

19 Q Over the course of with dealing with ERP while the
20 option agreement was in effect, did you periodically get
21 back to ERP, Equity Resources, about the status of these
22 permits and provide emails?

23 A Yes, I would update them from time to time.

24 Q The next exhibit is 52, which are some emails in
25 July of 2012, which should be in your book of exhibits.

1 And --

2 MS. LOHR: What number?

3 MR. WALKER: 52.

4 BY MR. WALKER:

5 Q They're back and front.

6 A Oh, oh, oh. Okay. Okay. I can't find yours. I
7 guess that's it. These don't look identical.

8 Q There are four pages in one exhibit.

9 A Oh, they're all mine. Okay.

10 Q Now, if you go to Page 983, which is at the -- part
11 of that email exchange. Does that show the different
12 permit schedules? Different permits in the schedule we
13 just looked at?

14 A Yes.

15 Q Who is this email exchange with that you're having?

16 A This is an email from me to John Irby.

17 Q Who is John Irby?

18 A John Irby is with ERP.

19 Q Was he a principal or a lawyer?

20 A He was both principal and lawyer. So, he was our
21 new lender.

22 Q What was the purpose of this email exchange?

23 A This was -- I would need to read it to confirm, but
24 attached to it is a copy of the permit update. So, let
25 me look at it and see.

1 Q And I'd ask you if this might refresh your
2 recollection, if you go to Page 3, which is the second
3 page, Taylor. It says 979 at the top, Page 3 at the
4 bottom.

5 MR. ACHURCH: I think there's three pages. There's
6 two page three's, and then, --

7 MR. WALKER: All right.

8 BY MR. WALKER:

9 Q The first Page 3.

10 A The first Page 3. Okay.

11 Q Do you see that?

12 A Yes.

13 Q Does that refer to giving them an update?

14 MR. ACHURCH: I object, your Honor, if he's asking
15 him about the contents of someone else's email.

16 BY MR. WALKER:

17 Q Did you save your emails back and forth with John
18 Irby?

19 A They were archived in our company server.

20 Q All right. Do these appear to be true and accurate
21 printouts of those emails, that email exchange?

22 A They do.

23 Q Were you a party to all these emails?

24 A I was either copied, or I would draft them, it
25 looks like.

1 MR. WALKER: We'd offer 52 into evidence.

2 MR. ACHURCH: Your Honor, I would object to that.

3 THE COURT: Basis?

4 MR. ACHURCH: It's hearsay.

5 THE COURT: Okay. You say you were either carbon
6 copied or you were a drafter. Is that right?

7 A Both. I was --

8 MR. ACHURCH: He wasn't the draft -- he was
9 recipient of several of these email chains.

10 MR. WALKER: He also -- it was a back-and-forth
11 exchange of several emails, and he prepared the
12 schedule.

13 MR. ACHURCH: I don't object to the schedule coming
14 in, your Honor, but the emails from some third party of
15 ERP, I object to that.

16 THE COURT: Well, I --

17 MR. WALKER: And they were maintained by them.

18 BY MR. WALKER:

19 Q Did you have an archive that maintained the emails
20 that were exchanged in the ordinary course of your
21 business?

22 A Yes.

23 MR. ACHURCH: I'm going to object, your Honor.
24 That's why the hearsay rule was invented.

25 THE COURT: Okay.

1 MR. ACHURCH: I mean, we can't crocss-examine him
2 on that.

3 THE COURT: I haven't read them. So, do I need to
4 look at them for content? Have you looked at them?

5 MR. ACHURCH: Yes, your Honor.

6 THE COURT: And you'll be using for the truth of
7 the matter asserted?

8 MR. WALKER: I'm using it to show that he -- there
9 are two things I'm going to show with this.

10 THE COURT: Okay.

11 MR. WALKER: That they were in communication --

12 THE COURT: Before we publish that, before we tell
13 the jury that, do I need to look at them or? Come here.
14 Talk to me for just one moment.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
16 HEARING OF JURORS. PRESENT: THE COURT,
17 MR. WALKER, MR. ACHURCH.
18 END BENCH CONFERENCE.

19 BY THE COURT:

20 THE COURT: Ladies and gentlemen, we've all decided
21 that now is a good time for lunch.

22 Ladies and gentlemen, I need to caution you, as I
23 do every time you leave, you are not to discuss this
24 case with anyone. You are not to do any independent
25 research.

1 Ladies and gentlemen, go grab a bite to eat. Come
2 back, and we're going to go ahead and continue with this
3 testimony. By the clock back there, it is a little
4 after 12:30. I am asking that you return to your jury
5 room by 1:45, where we'll go ahead and continue. Is
6 that acceptable with everyone? Very good. Okay. All
7 right. Ladies and gentlemen, have a nice lunch.

8 JURORS LEAVE COURTROOM 12:33 P.M.

9 OBJECTIONS AND RULING REGARDING

10 PLAINTIFFS' EXHIBIT NUMBERS

11 52, 53, 54, AND 55:

12 BAILIFF: Jury is clear, your Honor.

13 THE COURT: All right. Thank you, Rick.

14 Sir, you may step down.

15 A Thank you.

16 THE COURT: Just for the record, you said at this
17 point you're going to withdraw those exhibits for
18 offering. I think what we discussed in side bar was
19 that, I don't think there's anything wrong with
20 introducing what this witness wrote himself to Mr. Irby.
21 I think, obviously, he can authenticate it. He knows
22 and he can also testify to it. But if you want
23 something to show that, at the time, contemporaneously,
24 he said, yes, we want to exercise the option. So, I
25 think that's allowable. My concern is what Mr. Irby has

1 sent back, and whether or not we're looking at whatever
2 that information is for the truth of the matter.
3 asserted. I know you said that you were raising some
4 type of business record exception that he kept it in the
5 ordinary course of business. Just find me some case law
6 in this case.

7 I understand it's a contract negotiation, so I hear
8 your argument of, in a contract negotiation, you keep
9 all the emails as you're trying to come to an agreement.
10 But get me some case law or something, just on it.
11 Again, I just want to make sure that there is no hearsay
12 connection to it that can be upheld. Okay?

13 Anything else you all need before we break for
14 lunch? All right. Mr. Walker, how are we doing time-
15 wise, as far as your case is concerned?

16 MR. WALKER: As I said, I'm about fifteen minutes.

17 THE COURT: Okay.

18 MR. WALKER: Maybe twenty minutes, from finishing
19 up.

20 THE COURT: Okay. Okay.

21 MR. WALKER: On this witness.

22 THE COURT: Very good. Okay. So, are we still
23 shooting for your case somewhere tomorrow evening or?

24 MR. WALKER: I would like to do -- Garrett Budds is
25 here.

1 THE COURT: Okay.

2 MR. WALKER: And I would like to get Mr. Budds in
3 and Mr. Bush in, and we'd have three witnesses tomorrow.

4 THE COURT: Okay. Very good. Okay. Well, we'll
5 all be at ease. You all go grab a bite to eat, and
6 we'll see you all back at 1:45.

7 MR. ACHURCH: Thank you.

8 THE COURT: Thank you. Okay.

9 OFF THE RECORD 12:37 P.M.

10 BACK ON THE RECORD 1:49 P.M.

11 ARGUMENT AND RULING REGARDING

12 EMAIL EXHIBITS:

13 THE COURT: Sir, come on back up, if you would.
14 Are we all ready and prepared?

15 MR. WALKER: Your Honor, before we get going, I'm
16 just wondering if, in the interest of the jury and the
17 Court, if we could address this email problem now --

18 THE COURT: That's great.

19 MR. WALKER: -- because it's going to come up in
20 the next few exhibits.

21 THE COURT: Absolutely.

22 MR. WALKER: And I don't want to impose on the
23 jury.

24 THE COURT: Okay.

25 MR. WALKER: And I'll let Ms. Monoc, who's been

1 doing the research, I'll defer to her.

2 THE COURT: Thank you.

3 MR. WALKER: Thank you.

4 THE COURT: Okay. Okay.

5 MS. MONOC: All right. I found a Fourth Circuit
6 case, *United States versus Cone*, that, it basically says
7 that the concern is, when you're dealing with emails,
8 they're typically a more casual correspondence; and
9 you've got to meet the level of specificity required in
10 satisfying the business records rule.

11 THE COURT: Okay.

12 MS. MONOC: And so, there's four parts that you've
13 got to show: that it's a regularly-conducted business
14 activity kept in the regular course of business; it's a
15 regular practice to make the memorandum; and that it's
16 made by a person with knowledge or from information
17 transmitted by a person with knowledge. And the federal
18 rule is substantively the same as the state rule.

19 THE COURT: Right.

20 MS. MONOC: And the other -- and the other piece of
21 the rule mentions is that the source of info and the
22 method and circumstances indicate a lack of
23 trustworthiness, would be another reason to keep it out.

24 THE COURT: Right.

25 MS. MONOC: But I don't think the authenticity of

1 it, or the -- I don't -- and as far as I know, that
2 piece isn't really in question.

3 THE COURT: Okay. And just so I'm clear, Mr. Irby
4 is not testifying in this trial, correct?

5 MS. MONOC: He may be designated by a party. I
6 don't know.

7 MR. WALKER: Yeah. I don't think he's testifying
8 live. It would be by deposition.

9 THE COURT: Okay.

10 MR. WALKER: Yes.

11 THE COURT: Okay. And just so I'm clear, nothing
12 in his deposition testimony is contrary to what these
13 emails say, is it? And again, I know we're really
14 jumping over a couple of hurdles, but.

15 MR. WALKER: No.

16 THE COURT: Okay.

17 MR. ACHURCH: It wasn't addressed at all, Judge,
18 because we hadn't been provided -- and I don't know that
19 -- well, we hadn't been provided with some of the
20 correspondence that Mr. Irby had when we took his
21 deposition.

22 But the objection I have is that the email they
23 want to bring is Mr. Irby's email. It's his record.
24 It's not Mr. Bush's record.

25 MS. MONOC: Okay. May I speak to that? It's

1 transmitted by a person with knowledge. And so, this is
2 the same as -- and I also meant to mention that South
3 Carolina has the electronics -- I can't remember the
4 name of it -- act, but it's South Carolina Code 26-6-
5 130, where it basically says that you treat all formal
6 correspondence -- you can treat electronic records as a
7 formal correspondence.

8 THE COURT: Like a formal --

9 MS. MONOC: And so, I think the types of
10 discussions that are at issue between Mr. Bush and Mr.
11 Irby are things that, before email, would have been in
12 formal correspondence. They were about -- they were
13 saying, yes, we're going to exercise the option; here is
14 information that I promised you, pursuant to our option
15 agreement.

16 So, I just -- I'm confused as to why that's even an
17 issue to get it in, you know, under all these
18 circumstances.

19 THE COURT: Okay.

20 MS. MONOC: It seems to me that --

21 THE COURT: And while one of the players on this
22 email is this gentleman that's --

23 MS. MONOC: That's right. Who made decisions based
24 on, you know, having this information from somebody with
25 knowledge, who he has an option agreement with.

1 THE COURT: All right. Yes, sir.

2 MR. ACHURCH: Your Honor, the analogy to a letter
3 is a good analogy. That's, you know, I get a letter
4 from someone; I keep it in my drawer; and because I keep
5 all my letters. How does that make that letter not
6 hearsay? How do we know it's from a person with
7 knowledge? The Rule 803 of evidence says that it needs
8 -- there needs to be some affirmation that the record is
9 an appropriate record. And again, it's not Mr. Bush's
10 record. It's Mr. Irby's letter, if you will.

11 THE COURT: But I can tell you this, though. It's
12 the back and forth that gives you some assurance that
13 it is and has a good basis, because those are responses
14 to and from, I'm assuming. Again, I haven't seen those
15 emails, but one requires a response from another. So, I
16 think that speaks to authenticating that it's good, and
17 it's, again, someone, maybe, not even that has
18 knowledge, but someone who, apparently, can negotiate,
19 and that's what Mr. Irby does.

20 MR. ACHURCH: But it's the hearsay content, your
21 Honor. It's not Mr. Bush's statement. It's Mr. Irby's
22 statement, who is not with us.

23 THE COURT: Show me the emails.

24 MR. ACHURCH: And they want --

25 THE COURT: You're talking right now about four

1 emails? I want to know which ones are from him to Mr.
2 Irby, and what the response is back.

3 MR. WALKER: That would be 52 in our notebook was
4 the one we were talking about, your Honor.

5 THE COURT: Number 52 in that notebook. All right.

6 MR. ACHURCH: And that's not a --

7 THE COURT: Can I have the notebook? Because I
8 don't have that exhibit notebook.

9 MR. WALKER: I'm sorry. I thought you did.

10 THE COURT: I don't. Thank you.

11 MR. ACHURCH: And the 52, your Honor, isn't very
12 significant. What they're coming up to next is a -- is
13 a letter from Mr. Irby, outlining the terms and
14 conditions under which they might consider providing an
15 extension. Okay? This is where they're trying to get
16 with that. And that's a letter from Mr. Irby, and it's
17 a statement from Mr. Irby.

18 You know, and again, it's not Mr. Bush's record.
19 If this was -- this would, if, you know, the County
20 thought something was great, and I came in here and
21 said, Judge, you know, so-and-so and so-and-so and so-
22 and-so agree with this, you know. Well, how is that?
23 Well, I've got a bunch of their letters. I want to put
24 those into evidence right now.

25 THE COURT: I don't understand, because you keep

1 saying it's not Mr. Bush's record. But it is his
2 record, because it's off of his email, and they're going
3 back and forth.

4 MR. ACHURCH: Well, the back and forth is
5 different, but it's not something that he created. It's
6 not his record. He's copying it, basically. If you
7 treat it like a letter, your Honor, it's a letter. It's
8 a correspondence.

9 MS. MONOC: Getting back to Mr. Achurch's analogy
10 about the letters is, the Fourth Circuit case that I
11 provided to the parties and to your Honor at lunch, it
12 speaks to this very issue of, you know, the reason that
13 emails have this higher level of specificity that you
14 really have to meet are because, you know, you could
15 just send emails all day long, like, how did -- did you
16 go to the game this weekend. They're not things that
17 you would keep in the normal course of business that are
18 between decision-makers. And I think that we satisfied
19 what the Fourth Circuit set forth as, -- you know, I
20 believe that we meet the elements of the Fourth Circuit,
21 that set forth as to what you need to do to get the
22 email into evidence.

23 MR. WALKER: Just to pick up on that, the subject
24 needs to be about the business. And the fact is, as Ms.
25 Monoc said, that you got back to somebody and said, did

1 you go to the Carolina game last weekend, and all of
2 that. It has nothing to do with the business. But if
3 this is the typical way to communicate in a business
4 relationship on a contract, it is right at the heart of
5 the business about in terms of reporting under the
6 option agreement and the forbearance agreement, which
7 required reports, in terms of what the response is going
8 to be from the other party and the communication to the
9 other party, at least with respect to this email, that
10 we're going to need the 120 days -- the additional six
11 months, and we would pay the 375. So, the subject of it
12 is squarely in the business matters at issue.

13 THE COURT: Okay. Just let me look at the emails
14 real quick.

15 Okay. So, in looking at Number 52, Exhibit Number
16 52, what appears to be these one, two, three, these
17 emails, in reading the substance of them, the only
18 person that's giving any substance is Taylor Bush.
19 There's no substance -- all that Mr. Irby keeps saying
20 is keep me updated on your progress. I mean, I don't
21 see where he has said anything of substance in any of
22 these. Tell me what you're doing. What, you know, tell
23 me what your intent is. I mean, that's -- I mean,
24 that's what they seem to say, to me. I mean, they're --
25 I don't think they're anything contained in -- as far as

1 Mr. Irby's record. I think he's like, let me know what
2 are you doing.

3 I mean, we can characterize them as a lot of
4 things, but I guess it could be characterized as he's
5 saying, we're doing all this work; we're trying; we're
6 trying real hard; please don't whatever. I mean, you
7 can characterize them any way you want, but that appears
8 to be kind of what they're doing.

9 MR. ACHURCH: These emails are not particularly
10 important, your Honor.

11 THE COURT: Okay.

12 MR. ACHURCH: This isn't the -- this isn't my real
13 gripe, okay? these, your Honor.

14 THE COURT: Take me to the exhibit that's going to
15 be a real problem.

16 MR. WALKER: Turn the page to 53, and then, we're
17 getting to it.

18 THE COURT: Got it.

19 MR. ACHURCH: Yeah, 53 is the --

20 THE COURT: Okay. So, just so I understand, Mr.
21 Achurch, your concern is this January 7, 2013 email from
22 John Irby to Mr. Bush? Is that correct? Is that the
23 one?

24 MR. ACHURCH: Yeah, January 7, 2013, yes.

25 THE COURT: Okay. And I think it goes and shows

1 towards -- okay. I think they have met their burden in
2 these emails, but I also see that it doesn't show that
3 Irby promised them anything, other than, conditionally,
4 we might do this, but you have to do X, Y, and Z. And I
5 mean, it even goes on to say, is that -- I mean,
6 frankly, I think there's plenty good for you in that
7 email.

8 MR. ACHURCH: I think there's --

9 THE COURT: I mean, it goes both ways.

10 MR. ACHURCH: Well, I think there are favorable
11 things, as well. There's some other ones, as well.
12 There's letters from their lawyers and things they're
13 trying to get in. So, if, you know, whoever wrote me a
14 letter, I put it in my file, and all of the sudden, it's
15 not hearsay anymore, because I put it in my file.

16 THE COURT: It's different if it's a letter than a
17 response back and forth on email. These are responses
18 that give it context. So.

19 MR. WALKER: And just so the Court knows, the other
20 -- 54 and 55 are the last ones we would put in. They
21 sort of sum -- finish up those communications.

22 THE COURT: Okay.

23 MR. WALKER: Series of communications.

24 THE COURT: Okay. I mean, the email from Mr. Irby
25 doesn't presuppose in any way that they're going to be

1 able to exercise their option in 120 days.

2 MR. ACHURCH: I agree with that, Judge.

3 THE COURT: But anyway. So, I'm going to let it
4 in. And so, we'll just wrap up this portion of it. And
5 just be cognizant, I think your jury is tired, Mr.
6 Walker.

7 MR. WALKER: I understand that. That's why I
8 wanted to do this right --

9 THE COURT: I know.

10 MR. WALKER: That's why I wanted to do it right
11 now, rather than bring them back, and then, send them --

12 THE COURT: Okay. I agree, and I appreciate that.
13 So, let's go ahead and do it, and we'll go ahead.

14 Rick, you want to bring them in?

15 Anything else?

16 MR. ACHURCH: No. No, thank you.

17 THE COURT: You're good. Don't get up.

18 MR. ACHURCH: Your Honor, too, before -- can we
19 just agree it won't be necessary for me to continue to
20 object?

21 THE COURT: We're going to have to do a running
22 objection that we are just going to place on the record.
23 A running objection as to the emails.

24 MR. ACHURCH: Thank you, your Honor.

25 MR. WALKER: And that we --

1 THE COURT: Yes, sir.

2 MR. WALKER: -- acknowledge that previous running
3 objection --

4 THE COURT: Thank you.

5 MR. WALKER: -- that he objects to 53, 54, 55, and
6 56 [sic].

7 THE COURT: Agreed.

8 MR. WALKER: Thank you.

9 COURT REPORTER: Say that again.

10 MR. WALKER: I'm sorry, 52, 53, 54, and 55.

11 BAILIFF: You ready, your Honor?

12 THE COURT: Yes, sir.

13 BAILIFF: Jury is entering the courtroom, your
14 Honor.

15 THE COURT: Thank you.

16 JURORS ENTER COURTROOM 2:05 P.M.

17 BACK ON THE RECORD WITH JURORS IN

18 ATTENDANCE.

19 THE COURT: You all may be seated. Welcome back,
20 ladies and gentlemen. I trust everyone had a good
21 lunch. You all are refreshed, ready to go? All right.

22 Mr. Walker, you can continue with your witness,
23 sir.

24 MR. WALKER: Thank you very much.

25 TAYLOR BUSH, CONTINUE

1 DIRECT EXAMINATION, BY MR. WALKER:

2 Q When we took a well-needed break, you had before
3 you Exhibit 52. Do you have that before you there?

4 A They're all -- somebody's picked them all up.

5 Q All right.

6 COURT REPORTER: Right here they are. That would
7 have been me.

8 A My stuff.

9 Q And so that we can move through this, Mr. Bush, is
10 52 an email exchange between you and John Irby?

11 A It is.

12 Q Mostly in July of 2012?

13 A Correct.

14 Q Does it concern your reporting to him on the
15 permits?

16 A It appears to be a reporting on the permits, yes.

17 Q And on Page -- we looked at last time, does it
18 contain an updated report?

19 A It does, yes.

20 Q Okay. And did you also, in this email, on Page --
21 it would be the one with 982 at the top, and it may be
22 on the back of your copies, the third page. Did you
23 talk to him about the second extension -- or the first
24 extension of the option?

25 A It does, yes.

1 Q All right. And what are you telling him in that
2 email to him?

3 A I'm just telling him that we're moving forward with
4 the permitting, that the amenities design is well
5 underway, and that we intend to exercise the option.
6 Yes, that's it.

7 MR. WALKER: Your Honor, we would move 52 into
8 evidence.

9 THE COURT: Okay. Subject to your prior objection,
10 yes.

11 ITEM IDENTIFIED AS EMAIL THREADS
12 UPDATING PERMITS AND APPROVALS
13 WITH ATTACHED TRACKING REPORT
14 MARKED PLAINTIFFS' EXHIBIT NUMBER 52,
15 ADMITTED AS EVIDENCE.

16 BY MR. WALKER:

17 Q Could we get that last of this page of that,
18 please. If you could feature that for us.

19 And Mr. Bush, if you could go over that with us,
20 because it concerns a fair amount of money.

21 A Okay.

22 Q What are you saying to him?

23 A You want me to read the --

24 Q Yeah.

25 A Okay.

1 John: as I mentioned in my previous
2 email, we are still working on our
3 engineering of the final site plan approvals
4 for the Pinckney Point property. We are also
5 working to finalize our amenities design, all
6 of which is required before we bring this
7 property to the market.

8 As a result, it appears that the
9 development of the property will be moved
10 into the spring of next year, depending on
11 market conditions.

12 Please accept this email as confirmation
13 that we will be exercising our option to
14 extend the closing date, as provided for
15 in our option agreement.

16 It is my understanding that we are
17 required, under the agreement, to fund an
18 extension fee of \$375,000.00, prior to 2:00
19 o'clock p.m., August 31, 2012. Please advise
20 if this deadline is not correct, or if you
21 require notice of our intent in any other form.

22 Thanks for your patience in providing this
23 response to your request.

24 Q Did Pinckney Point, in fact, come up with the
25 \$375,000.00 in time to extend the time to close to

1 February 28, 2013?

2 A Yes. Yes, they did.

3 Q Can I have 102 and 103?

4 Were you still seeking approval related to the
5 water system at this time?

6 A We were seeking a lot of different approvals. I
7 don't know specifically if the water system was still
8 outstanding or not.

9 Q This is one for you and her Honor.

10 A Okay.

11 Q Does Plaintiffs' Exhibit 102, a letter from
12 Beaufort-Jasper Water & Sewer Authority, July 31, 2012,
13 refresh your recollection?

14 A Yes, it -- I mean, it's clearly we were in the
15 process of getting approval for the water system.

16 Q I'm going to give you what's marked as 103, with a
17 copy for her Honor.

18 THE COURT: Thank you.

19 Q Do you recognize Plaintiffs' Exhibit 103 that's on
20 DHEC stationary, Water Supply Construction Permit?

21 A I do, yes.

22 Q Did you review that shortly after receiving it?

23 A Yes.

24 Q Would both of these have been kept with your
25 project file in the ordinary course of business?

1 A It would have been, yes.

2 Q And would you have relied on them?

3 A Yes, absolutely.

4 Q Do they concern this project?

5 A Yes.

6 MR. WALKER: We'd move 102 and 103 into evidence.

7 THE COURT: Any objection?

8 MR. ACHURCH: Just the same objection we discussed
9 earlier, your Honor.

10 THE COURT: I'm sorry. Okay. Subject to your
11 prior objection, 102 and 103 are in evidence.

12 ITEM IDENTIFIED AS LETTER FROM
13 BEAUFORT-JASPER WATER & SEWER
14 AUTHORITY TO WILLY POWELL,
15 DATED JULY 31, 2012,
16 MARKED PLAINTIFFS' EXHIBIT NUMBER 102,
17 ADMITTED AS EVIDENCE.

18 ITEM IDENTIFIED AS WATER SUPPLY
19 CONSTRUCTION PERMIT
20 MARKED PLAINTIFFS' EXHIBIT NUMBER 103,
21 ADMITTED AS EVIDENCE.

22 BY MR. WALKER:

23 Q All right. If we could put up 103. And go to the
24 very top part of it, please. Could you get that header
25 on, too, DHEC. That's fine.

1 And what is this, 103? What is 103, Mr. Bush?

2 A This is a construction permit to install the water
3 lines, water system.

4 Q We go to the bottom, is there a date?

5 A There is. It's October 19, 2012.

6 Q Okay. Now, if we go back to 102, which is the
7 letter from Beaufort-Jasper, please. And this letter to
8 you is dated what? I mean, not to you, but to Willy
9 Powell, your project engineer?

10 A July 31, 2012.

11 Q And the first paragraph says:

12 *The authorities reviewed the plans for*
13 *the above-referenced project, and approves*
14 *them, with comments for DHEC, water delegated*
15 *review permitting purposes. Please address*
16 *the comment and submit the following with*
17 *marked-up plans.*

18 And what was number one?

19 A The original South Carolina DHEC application for
20 permit to construct, properly completed, signed in blue
21 ink, with three copies.

22 Q All right. And is the permit we were looking at a
23 few minutes ago the actual permit to construct?

24 A Yes, it is.

25 Q All right. Thank you. Did you also go about

1 marketing the property?

2 A Yes.

3 Q Did you have a firm that you had engaged, hired, to
4 help you market the property?

5 A Well, we -- we had a firm that we had hired to help
6 us design our marketing material, to put together all of
7 our marketing brochures and everything. And they were
8 also helping us design our amenities and our club -- the
9 community house and things like that.

10 Q Okay. And did you work with them to prepare some
11 materials?

12 A I did, yes.

13 Q And what were these materials?

14 A It was just a marketing piece that would tell the
15 history of the project, and describe the plans for the
16 project and site plans, and show, you know, basically,
17 the concept.

18 Q I'm giving you Plaintiffs' Exhibit 104. Is that
19 the marketing that you're talking about?

20 A It is, yes.

21 Q All right.

22 MR. WALKER: We'd move the marketing materials into
23 evidence.

24 MR. ACHURCH: No objection, your Honor.

25 THE COURT: Without objection.

1 ITEM IDENTIFIED AS MARKETING BROCHURE
2 MARKED PLAINTIFFS' EXHIBIT NUMBER 104,
3 ADMITTED AS EVIDENCE.

4 BY MR. WALKER:

5 Q What is the date on the cover there of the draft
6 that we have?

7 A December 20, 2012.

8 Q If we could go to Page 2, and the page after that.
9 This is the introduction within those marketing
10 materials. Do you talk about the project that you're
11 doing and the history of the property?

12 A Yes.

13 Q And then, if you'd move further along a page or
14 two, do you have a current version of the lot plan?

15 A We do, yes.

16 Q Would that be it on the screen right now?

17 A Yes.

18 Q And then, do you have some illustrations, more
19 illustrations and pictures, that we'll go through fairly
20 quickly?

21 A Yes, we do.

22 Q All right. If we could continue.

23 What are we looking at -- if we could just go back.
24 Is this an existing house, or is this the type of house
25 that you had envisioned?

1 A This was what we were calling Reunion Hall. It was
2 going to be the community center.

3 Q Okay. And if we could continue on, please, Dave.

4 And did you finish it up with even some more
5 pictures about the property, showing the property? How
6 about this, that's up there right now, Taylor? On the
7 screen?

8 A Yes, I see. It was going to just be a pavilion on
9 the lake.

10 Q All right. And what is this picture? I see a barn
11 right there.

12 A That's a picture of the -- it was the -- one of the
13 original barns on the property.

14 Q Were you all going to leave that?

15 A We were going to leave it, and we were going to
16 restore it.

17 And that's just an image of what it would look like
18 when -- when we restored it.

19 Q All right. How did the permitting go? We just
20 went over these two. The permit you got for the water,
21 were you able to wrap up all the permits before February
22 28, 2013?

23 A No. We -- we -- there are certain permits you
24 couldn't get until after you had final site plan
25 approval. So, grading permit, for example. So, no, we

1 weren't completely finished. We were close.

2 Q Um-hmm.

3 A But we weren't completely finished.

4 Q Did you have communications with Mr. Irby about the
5 status of the project?

6 A Yeah, we communicated on a regular basis. I would
7 send him emails, like, that would just let him know the
8 update. Like the email that we previously looked at.

9 Q Is Plaintiffs' Exhibit 53, again, a front-and-back
10 copy of the emails back and forth between you and Mr.
11 Irby? Is that one of the communications that you're
12 talking about?

13 A Yes, it is.

14 Q All right. And do you recall having this exchange
15 with him, or receiving this email from him?

16 A I mean, I don't specifically recall --

17 Q I'm not asking you the circumstances, but --

18 A -- just seeing it pop up on the screen, but --

19 Q -- did you receive it from him?

20 A But I did receive it from him, yes.

21 Q Okay.

22 A Clearly, I received it from him.

23 Q And did your company ordinarily keep all business
24 emails on its server?

25 A They did, yes.

1 Q Did it keep those emails that were related to the
2 core business of the company, the development of its
3 projects?

4 A Yes.

5 Q In your experience, were those records accurate?

6 A Sure, yes.

7 Q Had you ever --

8 A And they were complete.

9 Q -- once encountered anything in that email system
10 where the emails weren't preserved or you questioned
11 their authenticity or accuracy?

12 A No.

13 Q Now turning to fifty --

14 MR. WALKER: We'd move 53 into evidence, your
15 Honor.

16 THE COURT: With exception to the prior objection,
17 it's in evidence.

18 ITEM IDENTIFIED AS EMAIL THREAD
19 BETWEEN TAYLOR BUSH AND JOHN H.
20 IRBY, 12-31-12 THROUGH 01-17-13,
21 MARKED PLAINTIFFS' EXHIBIT NUMBER 53,
22 ADMITTED AS EVIDENCE.

23 BY MR. WALKER:

24 Q Okay. Let's start on the back of this one.

25 A Okay.

1 Q Did you write -- and if we could expand that just a
2 little bit. Late in the year, between Christmas and New
3 Year, did you write and email to Mr. Irby?

4 A Yes, I did.

5 Q Were you talking to him about the taxes on the
6 property?

7 A I was, yes.

8 Q All right. Did you also bring up at the bottom the
9 possibility of a meeting?

10 A I did, yes.

11 Q What were you proposing?

12 A Let me look at this for a moment.

13 Q At the bottom. Last paragraph.

14 A I'm reading that. It appears I was just proposing
15 that we would come by and give them an update on the
16 development and marketing strategies, is what it says.

17 Q Did you have that meeting with him?

18 A I seem to recall that we did. I know that me and
19 John Kunkel did go to Atlanta and sit down and talk to
20 them. I suppose it was the 4th.

21 Q Okay.

22 A Of January, that would have been.

23 Q And turning to the front page of this email
24 exchange, did Mr. Irby get back with an email directly
25 to you, copied to other people, on January 7th?

1 A This --

2 Q Following your meeting?

3 A Yes. This is an email from -- from John Irby to
4 me, on January 7th.

5 Q What does the first paragraph deal with?

6 A John and -- I tell John we wanted to follow up on
7 our conversation on Friday.

8 Q All right. Keep going.

9 A First, I can now confirm that we will
10 return to you the full amount of any
11 2012 property tax refund, if any,
12 received by us on the approximate
13 \$80,000.00 amount you told us that you
14 had recently paid for 2012 property taxes
15 on Pinckney Point, and for which Walter
16 Nester is applying for a rebate after he
17 files the papers we discussed. And I signed
18 on Friday, putting the property back on
19 agricultural use.

20 Q All right. Pause right there. Even though Equity
21 Resources owned the property, who paid the real property
22 taxes that year?

23 A They were requiring that we pay the taxes.

24 Q All right. Was that done?

25 A It was.

1 Q All right. Please continue.

2 A Okay.

3 Q Well, actually, why don't we skip to the third
4 paragraph, starting with we would.

5 A We under -- we would also appreciate another
6 thorough update on the status of permits and
7 actual copies, including what you don't
8 have and intend to get with a schedule of
9 that effort, and an updated copy of your
10 maps and development surveys, drawings, and
11 a copy of your recent appraisals discussed.

12 Q Were you willing to provide all that to him?

13 A I'm sure we were. We -- we gave them -- we would
14 give them anything they asked for.

15 Q What does he go on to say after that?

16 A We understand that you would like to have
17 some additional time to exercise your option
18 to buy the property. We can conditionally
19 agree to this request for a period of 120
20 days after the current date set for expiration
21 of your option if, and after supplying the
22 above, prior to February 15, 2013, the parties
23 can mutually agree to, in their sole and
24 absolute discretion, and fully execute a
25 document to be recorded for an expansion of

1 the current easement over the private road.
2 This expansion would have to be of a size, use,
3 and maintenance that would allow an owner of
4 our land to fully develop it in accordance
5 with your current development plans.

6 Further, you would execute and place in
7 escrow, with your counsel, a deed to the
8 private road that would be delivered to us
9 in the event you do not exercise your option
10 before the expiration of the additional 120-day
11 period.

12 Please let me know if these terms are
13 agreeable, and if so, I will ask Missy to
14 send me a proposed draft of the expanded
15 easement, escrow agreement supplement, and
16 deed.

17 Q Could you, as Pinckney Point, agree to what he was
18 asking for about the road parcel?

19 A I could not, no.

20 Q Why?

21 A Well, this was really something that would have to
22 involve Mr. John Kunkel.

23 Q Because of what?

24 A Well, he worked with our investors, and the road
25 was obviously owned by Road, LLC. He would had to have

1 communicated with them to get these --

2 Q To get their permission?

3 A Permission to do this type of thing.

4 Q Okay. Did you all attempt to get that permission?

5 A I feel certain that he did, but I couldn't testify
6 to that.

7 Q Could I have 54, please.

8 I've given you 54, which is an email, beginning of
9 2013, January of 2013 and February of 2013. And I'd ask
10 you if you -- or, again, are these emails that were kept
11 in the ordinary course of your business, by your
12 business, for these business communications?

13 A Yes, they would be.

14 Q All right. And if you go to Page 2 of these
15 emails, which, on the back side of Page 2, do you see an
16 email from you, Taylor Bush, to John Irby, on February
17 5?

18 A I do, yes.

19 MR. WALKER: Your Honor, we'd move the email into
20 evidence.

21 THE COURT: Okay. Subject to your prior objection.

22 ITEM IDENTIFIED AS EMAIL THREAD

23 BETWEEN JOHN KUNKEL, JOHN H. IRBY,

24 AND TAYLOR BUSH, DATED 01-29-02

25 THROUGH 02-08-13,

1 MARKED PLAINTIFFS' EXHIBIT NUMBER 54,
2 ADMITTED AS EVIDENCE.

3 BY MR. WALKER:

4 Q Could we have that email, please.

5 Okay. Would you tell us what you're communicating
6 to John Irby on February 5, here? And you can read the
7 email.

8 A Okay.

9 John, sorry for the delayed response.
10 We have been having a fair amount of discussions
11 with our investor, who owned the small parcel
12 in front of Pinckney Point. With the request
13 that you are asking, it requires quite a bit
14 of behind-the-scenes discussions, which are
15 nearly wrapped up. Would it be possible for
16 me and John --
17 -- that would be John Kunkel --
18 to have a call with you and Lee, to provide
19 you a quick update on how the equity raise
20 efforts have transpired, as well as discuss
21 the terms in which all parties would feel
22 comfortable to provide the easement that
23 you have requested.

24 If so, then, please let me know what
25 time would be good for you.

1 Thank you, Taylor.

2 Q That email refers to equity. What's equity?

3 A The equity raise would be -- we -- we refer to
4 equity as non-bank type of lending. If somebody's
5 putting cash into a project, that would be considered to
6 be equity.

7 Q Would this be referring to getting an investor?

8 A It would be, yes.

9 Q Then, if you go to the first page of this email, on
10 February 8th, does John Irby get back to you, about a
11 third of the way down?

12 A He does.

13 Q What does he say?

14 A He says:

15 *To give you an update, we have a meeting*
16 *Tuesday that will better enable us to get back*
17 *with you on your proposal.*

18 Q Okay. Did you finally get some permission to
19 respond to the offer that -- or not the offer, but the
20 terms that Mr. Irby had put forward?

21 A For this response?

22 Q Well, after that response.

23 A I don't know if I responded to them, or Mr. Kunkel
24 did.

25 Q All right. What I've given you is marked

1 Plaintiffs' Exhibit 55, and it's an email exchange,
2 February 22nd and February 23rd. There are some earlier
3 ones that carry over from that we just looked at. In
4 looking at those, do you see where you put together a
5 response to Mr. Irby?

6 A Well, I see the one that -- that I just read.

7 Q Now, go to the front page, sir.

8 A Okay. Okay. I'm there.

9 Q Do you have that? And do you see your email on the
10 bottom half of that dated February 22nd?

11 A Yes.

12 Q In that email, are you setting forth what can be
13 done, what you were able to do?

14 A I am, yes.

15 MR. WALKER: We'd offer 55 into evidence.

16 THE COURT: Subject to your prior objection. Is
17 that correct?

18 MR. ACHURCH: Yes, ma'am. Thank you.

19 THE COURT: Okay.

20 ITEM IDENTIFIED AS EMAIL THREAD
21 BETWEEN TAYLOR BUSH AND JOHN H. IRBY,
22 MARKED PLAINTIFFS' EXHIBIT NUMBER 55,
23 ADMITTED AS EVIDENCE.

24 BY MR. WALKER:

25 Q If you could please read this, starting with John.

1 A You want me to read this?

2 Q Yes, please.

3 A Okay.

4 John, thank you so much for taking time
5 late on Friday to discuss Pinckney. Rather
6 than getting wordy in this email, I will rely
7 upon you to convey to your partners our
8 conversation regarding our efforts to raise
9 capital, which we now feel is achievable with
10 a little more time.

11 With that said, we respectfully ask that
12 your group consider allowing us to complete
13 this process. The specific request is as
14 follows:

15 First bullet point:

16 Equity Resources grants to us a 120-day
17 extension to close the transaction.

18 Second bullet point:

19 We agree to complete the final step to
20 have the permit for the 53 docks issued by
21 DHEC.

22 Q And I'm just going to pause there. When you're
23 talking about 53 docks, you're not -- are you talking
24 about the community docks?

25 A I'm not a hundred percent certain.

1 Q Okay. Go ahead.

2 A Which, if that's the -- there were also single
3 docks. I don't know if it's a combination of the two,
4 or.

5 Q All right. What goes on? What's the third one?

6 A We agree to grant to Equity Resources the
7 right-of-way easement, which will be executed
8 on 02/28/13.

9 Q You skipped a parenthetical. What is that?

10 A Oh. I'm sorry. I'll read it again.

11 We agree to grant to Equity Resources
12 (with no conditions) the right-of-way easement,
13 which will be executed on 02/28/13.

14 Q Was that what he had requested earlier?

15 A Yes. He had -- yes, he had requested that all be
16 taken care of.

17 Q Had you gotten the consent of the investor, Road,
18 LLC, to do that?

19 A You know, I would not have written this email
20 without Mr. Kunkel having confirmed that to me.

21 Q All right. What are the last two?

22 A We pay to Equity Resources at extension fee
23 of \$100,000.00 on 02/28/13.

24 And then, finally:

25 We agree to an increase in the purchase

1 *price of \$150,000.00.*

2 *Your consideration of this request is*
3 *greatly appreciated. Have a wonderful weekend.*
4 *We look forward to your reply.*

5 Q And this email contains his reply. Did he reply
6 shortly thereafter, right above that?

7 A Yes. He responded, looks like, the next day:

8 *Guys, we talked about it. I think*
9 *we're just going to let the option expire*
10 *and stay in touch in the coming weeks.*
11 *Thanks for your effort.*

12 Q And did you get back to him?

13 A I said:

14 *John, I completely understand your*
15 *position. Please thank your team for their*
16 *reconsideration. Have a great weekend.*

17 Q Did Mr. Irby allow some additional time to close
18 after February 28th?

19 A He did. We -- yes, he did.

20 Q Until when?

21 A It was some time in March.

22 Q Does March 11 sound right?

23 A It does sound correct.

24 Q What did you do with that additional time? What
25 did Pinckney Point do?

1 A Well, I know that we began the process of preparing
2 settlement statements. So, that was ongoing. To get
3 ready for the closing.

4 Q All right. Was Pinckney Point able to get the
5 investor and close before the option expired on February
6 28th, and for close before March 11th?

7 A No, we were not.

8 Q Even though you weren't able to close, were you
9 still looking for an investor?

10 A Yes. Yeah, we -- yes, we were.

11 Q Why?

12 A Well, he seemed like he was willing to continue the
13 process, although we were out of options. So, we felt
14 we still had a very cooperative relationship with them.
15 And so, we continued to work on raising the -- the
16 equity.

17 Q Did you communicate with Mr. Irby at the end of
18 March of 2013 about a possible investor you wanted to
19 take to the property?

20 A I may have.

21 Q I'm showing you Plaintiffs' Exhibit 65. If you
22 would look at the back of that page, does that bring it
23 back to you?

24 A Yes.

25 Q Is this an email that's kept in the same way as the

1 other emails we were looking at?

2 A It is.

3 Q Is there any question in your mind about its
4 authenticity?

5 A None.

6 MR. WALKER: Your Honor, we would move 65 into
7 evidence.

8 THE COURT: Subject to your prior objection.

9 MR. ACHURCH: Thank you, ma'am.

10 ITEM IDENTIFIED AS EMAIL FROM
11 TAYLOR BUSH TO JOHN H. IRBY
12 DATED APRIL 3, 2013,
13 MARKED PLAINTIFFS' EXHIBIT NUMBER 65,
14 ADMITTED AS EVIDENCE.

15 BY MR. WALKER:

16 Q If we could have 65, please. There you go. And
17 this is an email from you to John Irby. It's April 3 of
18 2013.

19 A That's correct.

20 Q And what are you asking?

21 A So, on April the 3rd, I said:

22 Hey, John: I sent you an email a couple
23 of days ago, and wanted to make sure you
24 received it. Also, I have a potential
25 investor that would like to take a look

1 at the property this week. Do I have your
2 permission to take him on the property?

3 Thanks, Taylor.

4 Q And is his response on the front of this email up
5 there?

6 A It is.

7 Q A third of the way down? And let's feature that.
8 And what day is that?

9 A He responded -- I wrote the email that morning, and
10 he responded late afternoon, 5:00 o'clock.

11 Q And what does he say?

12 A He said:

13 Sorry, I was out of the country on
14 Monday and Tuesday. Yes, you do have permission
15 to show your potential investor the property
16 this week. Please contact Charles to let him
17 know in advance.

18 If you need to go on the property again
19 in the future, just let me know, please. It
20 should not be a problem.

21 Q Did you learn something in the next week about this
22 property that you had not known before? Did you learn
23 about any other interested party?

24 A Before or after this?

25 Q After that.

1 A After this? Yeah. Before this, I wasn't aware,
2 but soon after this, I learned that the property was
3 under contract with the County, for the County to buy
4 the property.

5 Q And what was your reaction?

6 A We were shocked. We were shocked.

7 Q Did you do anything in response?

8 A I don't recall. I mean, we --

9 Q Did you contact --

10 A In terms of Mr. Irby, I don't recall if I did
11 anything.

12 Q No, with respect to the County, did you do
13 anything?

14 A Oh, yes. With respect to the County, we -- we
15 immediately, through our attorney, notified the County
16 that we objected to this purchase.

17 Q And to your knowledge, was there a meeting with the
18 County between your attorney, Walter Nester, and the
19 county attorney?

20 A Yes, there was.

21 Q To your knowledge, was a letter sent to the County
22 by --

23 A He did send a letter, yes.

24 COURT REPORTER: I'm sorry, let him finish his
25 question, please. Would you say that again, please.

1 Q To your knowledge, was there a letter sent by
2 Walter Nester to the County about the potential
3 acquisition?

4 A And yes, there was.

5 Q Did the County give up its effort to get the
6 property after that notice?

7 A No.

8 Q What happened?

9 A They just moved forward. They just continued on.

10 Q Mr. Bush, we've looked at those emails about trying
11 to get 120 days. You've talked about the different
12 approvals, and the ones you got near the end of the
13 year. Based on everything you had done with this
14 property, do you think if you'd had 120 more days, you
15 could have gotten the remaining approval that you
16 needed?

17 A Yes, I believe we could have.

18 MR. WALKER: That's all we have at this time, your
19 Honor.

20 THE COURT: Okay. Cross-examination?

21 MR. ACHURCH: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. ACHURCH: Thank you.

24 TAYLOR BUSH

25 CROSS-EXAMINATION BY MR. ACHURCH:

1 Q Good afternoon, Mr. Bush.

2 A Good afternoon.

3 Q I'm going to try not to be too lengthy with this,
4 but I'm not going to make you any promises.

5 I'm going to ask you a couple of housekeeping
6 things here. Arendale Hold -- I'm reading these things.
7 We took your deposition previously. You remember you
8 having your deposition taken?

9 A I do, yes.

10 Q Two times.

11 A Two times, yes.

12 Q Okay. And so, I'm going to ask you questions,
13 really, right out of here, so. I just want to go
14 through here. Arendale Holdings owns Road, LLC,
15 correct?

16 A That's my understanding, yes.

17 Q Okay. And you work for Arendale Holdings; don't
18 you now?

19 A No, I do not.

20 Q You do not? Okay.

21 A Hm-mmm.

22 Q I thought Counsel had said that earlier. The sign
23 on the door to your office says, Arendale Holdings,
24 right?

25 A No, it does not.

1 Q It does not?

2 A No.

3 Q Okay. Who owns Pinckney Point, LLC?

4 A It's owned by Stokes Land Group, SLG Bush, SLG
5 Barnes, and SLG Johnston. And I think it's actually --
6 I think it's, yeah, Stokes Land Group, I think, is
7 correct.

8 Q Okay. And SLG Bush, that would be owned by you,
9 correct?

10 A That's correct.

11 Q Okay. And Stokes Land Group, they're the only ones
12 that put any money in the project. Is that correct?

13 A In our business, money comes from many sources. To
14 say that they're the only ones putting money, I don't
15 know where their money comes from.

16 Q Well, let me ask. SLG Bush, SLG Johnston, SLG
17 Barnes, they didn't put money --

18 A No.

19 Q -- they didn't put cash in. Okay.

20 A Did not.

21 Q And does Arendale Holdings have a stake in Stokes
22 Land Group?

23 A I do not know for sure.

24 Q Okay. And you do not have a role with Road, LLC,
25 correct?

1 A That's correct.

2 Q Okay. You don't have any interest at all in the
3 Road, LLC, except that you manage their operation.

4 A I wouldn't say I manage Road, LLC's operation.

5 Q You would not? You did manage Pinckney Point,
6 LLC's operation.

7 A That's correct, yes.

8 Q And Pinckney Point, LLC, is that a single-purpose
9 LLC?

10 A Yes, it is.

11 Q And it is formed just to do this -- just to do this
12 development, right?

13 A That's correct, yes.

14 Q That's an LLC, that's a limited liability company,
15 right?

16 A Yes, correct.

17 Q Okay. And that's so you can limit the liability of
18 the people who own these LLCs, right?

19 A That's correct, yes.

20 Q And you don't know the members of the Stokes Land
21 Group?

22 A I couldn't -- I wouldn't be the one to testify to
23 that.

24 Q Mr. Kunkel is the CFO of Arendale?

25 A I -- I think he is CEO now.

1 Q Okay. And did you say you know or don't know if
2 Arendale Holdings has a stake in Stokes Land Group?

3 A I would not be qualified to testify as to their
4 holdings.

5 Q And I'm listening to you. I'm sorry, I'm walking
6 away.

7 A Okay.

8 Q And are you employed by SLG Management Services?

9 A I was.

10 Q Okay. Who are you employed by now?

11 A I work for Brookwater Land Partners.

12 Q And I understand, then, you went through this --
13 you testified the original purchase price was about
14 fifteen million. Do you know if it was 15.5 million?

15 A I would need to refresh my memory, look at the
16 contract, but it was --

17 Q Okay.

18 A -- it was 15 million, maybe 15.5.

19 Q Okay. And you testified earlier that there --
20 before you purchased the property, or Pinckney Point,
21 LLC, purchased the property, there as an access issue
22 that was going to delay the purchase, right?

23 A Yes, that's correct.

24 Q And the seller approached you to reduce the price
25 to ten million dollars.

1 A Yes.

2 Q He wanted to get it sold more quickly?

3 A That's correct.

4 Q Okay. So, he took a five-million-dollar reduction,
5 because of the road access.

6 A Because of the road issue, he took a five-million-
7 dollar reduction.

8 Q Okay. I was just trying to verify this and make
9 sure on the record -- and I'll represent that you
10 previously told me Arendale Holdings had a stake in
11 Pinckney Point, LLC. Do you remember telling me that,
12 or can you say that's not true?

13 A I'm -- I'm just really not qualified to talk about
14 the structure of Arendale Holdings and how they're --
15 they're structured. That's --

16 Q Okay.

17 A My involvement didn't go above Pinckney Point, LLC.

18 Q Okay. Well, let me give you a copy of your
19 original deposition just to ask you about that.

20 MR. ACHURCH: And I'd ask the Court if you could
21 just explain to the jury with what that is.

22 THE COURT: Ladies and gentlemen, what he's opening
23 is an earlier deposition that he gave in this case. A
24 deposition is usually done in a lawyer's office. There
25 is a court reporter there who swears a person in, and

1 each side, each of the attorneys, get to ask questions
2 of the witness.

3 And again, it's to be judged just as if they were
4 here at the same time, testifying in front of you.
5 There's never any judge present, but the attorneys on
6 both sides get to ask questions of the witness.

7 MR. ACHURCH: Thank you.

8 BY MR. ACHURCH:

9 Q And Mr. Bush, will you please turn to Page 29 of
10 your deposition. Need some help with that?

11 A No, I think I can get it. Okay.

12 Q If you just look at Page 29 there. And you see
13 Line 12?

14 A Yes.

15 Q You see where it says:

16 *And to the best of my knowledge,*
17 *Arendale Holdings has an investment stake*
18 *in Pinckney Point, LLC.*

19 A I see that, yes.

20 Q Okay. Do you remember that now?

21 A Yes, I remember that.

22 Q Okay. Thank you. And it was your testimony at
23 that time -- you can just hold onto that -- because
24 Road, LLC, bought the road property, because you went to
25 BB&T, and they declined to make the loan. Is that

1 correct?

2 A That's correct.

3 Q Okay. And Pinckney Point, at that time, did not
4 have anymore capital to buy it in 2009, right?

5 A When we bought -- when -- when --

6 Q When you agreed to purchase Agnes' property, Agnes
7 Pinckney's property, in 2009, there was no capital to
8 buy it.

9 A We had to go raise money to do that.

10 Q Okay. And so, in 2009 -- and I recall seeing a
11 letter from your attorney, Mr. Nester, who, when he was
12 writing to Ms. Pinckney. And I'm just going to ask you
13 if you remember that the lender and your source of
14 capital said they weren't going to continue to make
15 interest -- the source of capital said they're not going
16 to keep making interest payments and they weren't going
17 to buy this road parcel. Do you remember? Is that
18 true?

19 A I don't remember.

20 Q Since 2007.

21 A I don't remember that.

22 Q Okay. You don't remember from 2007 forward, your
23 investor said we're not going to keep paying for
24 expenses for this?

25 A No.

1 Q Okay. Do you agree, in 2009, you did not have the
2 capital to continue to pay the interest, and then, buy
3 this property from Ms. Pinckney, right?

4 A No, I wouldn't testify to that.

5 Q You would not?

6 A Hmm-um.

7 Q Okay. Did you have capital in 2009?

8 A Mr. Kunkel would be -- he was the CFO at the time.
9 He was the -- he was the one in charge of that. He
10 would need to -- to testify to that. But I mean, we --
11 we were still paying bills and doing engineering, and we
12 -- we made our interest payments to the bank right up to
13 the time that they called the loan.

14 Q When did the bank foreclose on you? Do you
15 remember?

16 A I don't remember.

17 Q My records indicate the bank actually filed the
18 foreclosure proceedings on February 11, 2010.

19 A Okay.

20 Q Do you believe that?

21 A I believe you.

22 Q Okay. And you don't believe that you just didn't
23 pay one month, and they foreclosed on you.

24 A Absolutely not. That is not what happened.

25 Q Okay. So, you would agree that, probably, by 2009,

1 the interest wasn't getting paid.

2 A The interest wasn't getting paid because they
3 called the loan, and they put us in default, and it was
4 not sensible to make an interest payment on a defaulted
5 loan.

6 Q Okay. All right. And that was in February of
7 2010.

8 A Okay.

9 Q Is that correct?

10 A I don't have a recollection of when -- what those
11 dates were.

12 Q Okay. All right. So, you were in default on the
13 loan. They put you in -- they started foreclosure
14 proceedings. So, you had a pretty good idea at that
15 time that you needed to start raising some capital,
16 right?

17 A Well, they put us in default on the loan, because
18 the loan -- the date on the loan expired.

19 Q Right. So, you knew you needed to get some
20 capital, right?

21 A Well, we needed to work something out with the
22 bank.

23 Q Right.

24 A It wasn't really so much an issue of getting
25 capital. It was an issue of getting an agreement with

1 the bank, so that we were comfortable continuing to --
2 to put money into that -- that loan.

3 Q Well, when they started foreclosure proceedings,
4 did you think, man, I better get another loan, or I
5 better get some cash?

6 A We -- we were -- we were thinking that we needed to
7 do something.

8 Q Right.

9 A Sure.

10 Q Right. So, you started right then looking for a
11 loan or looking for some cash, right?

12 A Well, we -- we -- I think our first effort was to
13 try to resolve the issue with the bank, to try to get
14 them to give us an extension to that loan, so that we
15 could finish this project.

16 Q Okay. So, you were going to work with the bank,
17 try to work it out. I mean, did you start, maybe I
18 can't work this out with the bank; maybe I should start
19 looking for some money?

20 A Well, to be clear, John Kunkel handled the -- our
21 banking relationships. But I do know that John was
22 doing everything in his power to work out something with
23 the bank.

24 Q Okay. All right. And well, as an investor, as
25 somebody in this project, would you agree that, when the

1 bank forecloses on the loan that secures the property
2 that's being developed, that it would be prudent to look
3 for another loan or try to get some money? Try to get
4 another investor?

5 A It would be prudent to try to do something.

6 Q Okay. So, that's -- and you're prudent people,
7 right?

8 A I think so. Yes.

9 Q And so, you would have gone to try to do that. All
10 right. So, as of 2009, or at least the beginning of
11 2010, you would acknowledge that you would have had to
12 have start looking for some money, capital, or a loan of
13 some sort.

14 A Or needed to work out something with the bank.

15 Q Okay. And did you challenge the bank's
16 foreclosure?

17 A Mr. Kunkel would need to talk about that. He was
18 in charge of the relationship with the bank.

19 Q Okay. Do you recall, in the answer to the
20 foreclosure, that you made a counterclaim, and that
21 Pinckney Point actually blamed the bank for the fact
22 that you were in foreclosure?

23 A I don't recall that, no.

24 Q You don't recall? Have you ever seen the answer to
25 the complaint?

1 A I can't say that I have.

2 Q Okay.

3 MR. WALKER: No objection, your Honor.

4 THE COURT: Thank you.

5 MR. ACHURCH: Well, if he doesn't object, I'll just
6 move this into evidence.

7 THE COURT: Thank you. What exhibit number is
8 that?

9 MR. ACHURCH: Plaintiffs' Exhibit 1.

10 THE COURT: Okay. Defendant's, maybe?

11 MR. WALKER: Defendant's Exhibit 1.

12 THE COURT: Defendant's Exhibit 1, maybe.

13 MR. ACHURCH: I'm sorry. I was way over here by
14 the jury.

15 THE COURT: Okay.

16 ITEM IDENTIFIED AS COPY OF
17 ANSWER AND COUNTERCLAIMS,
18 MARKED DEFENDANT'S EXHIBIT NUMBER 1,
19 ADMITTED AS EVIDENCE.

20 BY MR. ACHURCH:

21 Q Let me show you this, and ask you to identify that
22 as the answer in the counterclaims to the bank's
23 foreclosure actions.

24 A This is an answer and counterclaim.

25 Q Okay. And that was in the foreclosure action when

1 the bank foreclosed on Pinckney Point, LLC, correct?

2 A You know, I didn't handle that, so I couldn't
3 testify that this was in that document or not.

4 Q Okay. This is Pinckney Point, LL -- you're
5 Pinckney Point, LLC, right?

6 A I -- I do work -- I -- I was -- yes.

7 Q The man on the ground.

8 A I'm the man on the ground.

9 Q All right. Can I hold that one sec. And in this
10 -- and by this time, you had already contracted with
11 Agnes Pinckney to buy the property, or an easement over
12 her property, correct?

13 A What's --

14 Q Her property or an easement over her property.

15 THE COURT: Mr. Achurch, you need to go back this
16 way.

17 MR. ACHURCH: Okay. Oh, sorry.

18 BY MR. ACHURCH:

19 Q Is that true?

20 A Well, I'm looking at the date of this document to
21 see. You're asking me if we had already done that.

22 Q Okay. So, you agreed to buy Ms. Pinckney's
23 property in 2009. You remember that? I'm just remember
24 it from the other --

25 A Yes. Well, we agreed to pay her for an easement in

1 2009.

2 Q Okay. And this was in April of 2010.

3 A Okay. So, yes.

4 Q Okay. And in this document, let me see. Would you
5 read Page -- Paragraph 44 of the answer?

6 A Throughout, Pinckney Point notified BB&T
7 that the extreme delay of BB&T and its lack
8 of response were causing the access settlement
9 to fall apart.

10 Q Okay. And then, read Page 40, Paragraph 47,
11 please.

12 A As a direct and proximate result of the
13 dilatory and bad faith actions of BB&T,
14 Pinckney Point was unable to enter a
15 reasonable settlement in a timely manner,
16 which would have ultimately allowed Pinckney
17 Point to make payments to BB&T note, and to
18 generate revenues, which would have avoided
19 foreclosure.

20 Q Okay. And would you read Page 48?

21 A Pinckney Point has been damaged as a result
22 of BB&T's sabotage of the settlement, and
23 its effort to take the property through
24 foreclosure, and run up the amounts it
25 claims are due as a result of the alleged

1 default.

2 Q All right. And would you read Page -- Paragraph
3 53, please?

4 A *Because of BB&T's breach, Pinckney Point*
5 *has suffered, and will continue to suffer,*
6 *actual damages in an amount to be established*
7 *at the trial of this case, and BB&T should*
8 *be barred from proceeding with the foreclosure.*

9 Q Okay. So, in this foreclosure action, it was
10 alleged that you were in default because of BB&T, right?

11 A That would be -- I suppose that would be one of the
12 allegations.

13 Q Okay. And when BB&T foreclosed, as a result of
14 that foreclosure, Pinckney Point, LLC, lost millions.
15 Is that right?

16 A Well, they never foreclosed.

17 Q Well, they initiated foreclosure proceedings,
18 correct?

19 A Correct.

20 Q Okay. And you don't call it foreclosed until they
21 actually, like, go to the courthouse steps and get a
22 deed.

23 Q That's correct. Yes.

24 Q And as a result of the foreclosure proceedings,
25 Pinckney Point, LLC, lost millions. Isn't that right?

1 A Well, as a result of the foreclosure proceedings,
2 this loan was eventually sold to another party, and it
3 -- and we ended up into the option agreement, like we
4 talked about before. And that option agreement
5 eventually expired.

6 Q Okay. Let me look -- get you to look at Page 48 of
7 your deposition. I'm sorry, 46. Just tell me when you
8 get there.

9 A I'm there.

10 Q First, on Page -- Line 14, are you with me?

11 A I am.

12 Q The question was:

13 *Are you aware of any efforts Pinckney*
14 *Point, LLC, made to get another loan at*
15 *another bank?*

16 And what's your answer?

17 A I said, no, I am not aware of any effort to do
18 that.

19 Q The next question was: *Okay. Did Pinckney Point,*
20 *LLC, lose money because of the foreclosure?* And what
21 was your answer?

22 A I said, yes.

23 Q Okay. And I said, how much? And tell me what your
24 answer was.

25 A I said, I don't know. I don't feel comfortable

1 guessing.

2 Q No, just read it -- read it exactly.

3 A I don't know. I don't feel comfortable guessing,
4 but it was -- it was millions of dollars.

5 Q Several million dollars? What was your answer?

6 A Several million dollars.

7 Q Okay. So, does that refresh your recollection now
8 as to that Pinckney Point actually lost several million
9 dollars due to this foreclosure, right?

10 A It was never foreclosed on.

11 Q Okay.

12 A By BB&T.

13 Q Okay. And the loan balance of BB&T was, I think
14 you said, about eight million dollars.

15 A I think so.

16 Q Do you know if was actually eight and a half, or do
17 you know?

18 A I didn't handle those things.

19 Q Okay.

20 A They were handled by Mr. Kunkel.

21 Q And in this case, with buying the property back,
22 you never did get the money to buy this property, did
23 you? The Pinckney Point property, you never did get the
24 money to buy it back.

25 A I -- I would not testify to that, no. I would not

1 say that.

2 Q You would not?

3 A No.

4 Q Okay. Well, let me get you to look at Page 50 of
5 your deposition. You with me?

6 A I'm with you.

7 Q See Page 20 -- Line 24 there?

8 A I do.

9 Q The question was:

10 *Okay, all right. Was there a time you*
11 *actually obtained the money to make this*
12 *purchase?*

13 And tell me what your answer was.

14 Q I said, no. But just prior to that, I said John
15 Kunkel was working on it.

16 Q Right. John Kunkel was working on it, and but the
17 answer was, no, correct?

18 A That we were getting close.

19 Q Well, just read what your answer was, when I said:

20 *Was there a time when you actually*
21 *obtained the money to make this purchase?*

22 Just read your answer, please.

23 A That answer at that point was no.

24 Q And Pinckney Point, LLC, never did buy Dot's land,
25 did they?

1 A No.

2 Q And Pinckney Point didn't build her a dock, or give
3 her dock access, any of that, either.

4 A We did not, no.

5 Q Okay. And Agnes had some other requirements
6 besides money, and those things were not done, either,
7 were they?

8 A They were not.

9 Q When I was deposing you earlier and asking you
10 questions, I think you believed that Pinckney -- the
11 County agreed that Pinckney Point had to be used for
12 residential purposes. Is that what you believe?

13 A The -- I believe that the County was a partner with
14 us. When we signed the settlement agreement with all
15 parties and attached to that settlement agreement were
16 all the other agreements. So, contained within that
17 settlement agreement was a clear understanding that this
18 was going to be a residential neighborhood, and that the
19 County was going to do all in their power to facilitate
20 the approvals necessary to make that happen.

21 Q Okay. And in fact, in your complaint in this case,
22 in your amended complaint, Paragraph 40, it says:

23 *The County further committed the use of*
24 *Pinckney Point as a residential subdivision*
25 *by approving multiple entitlements to accomplish*

1 that residential development.

2 Do you agree with that?

3 A Well, I -- you -- you approved many entitlements
4 when we signed the settlement agreement.

5 Q Right. And the complaint says we committed to it
6 being a residential development because we gave you a
7 bunch of approvals, right?

8 A Well, --

9 Q That's how we committed to it.

10 A You knew --

11 Q You got all these entitlements.

12 A The County was well aware of what we were trying to
13 do with this property. And the County wanted to settle
14 with us, because they wanted to get that dock --

15 MR. ACHURCH: Well, I'm --

16 MR. WALKER: He's allowed to finish his answer. He
17 was asked a question.

18 THE COURT: Okay.

19 MR. ACHURCH: I don't think he can testify about
20 what happened, why the County wanted to do something,
21 your Honor.

22 MR. WALKER: It's responsive to the question.

23 A There's no question that the County was interested
24 in getting that order reversed, so that they could
25 continue to have enforcement over these docks.

1 MR. ACHURCH: Your Honor, I apologize, your Honor.
2 But that's not responsive to my question.

3 THE COURT: Okay. But and, he can answer, and
4 then, explain. So, I'm going to allow it.

5 MR. ACHURCH: Okay.

6 BY MR. ACHURCH:

7 A And so, we signed the settlement agreement, and in
8 that settlement agreement, it was our intention that it
9 was going to be the end of this fight with the County on
10 all of these many issues that were delaying this project
11 and caused us to be in default with that bank.

12 MR. ACHURCH: Your Honor, I just object to that and
13 move to strike. That's not a question as to whether or
14 not the County committed to having a residential
15 development because we gave him multiple permits. Okay?

16 THE COURT: Well, --

17 BY MR. ACHURCH:

18 Q Is that your position, sir, in this complaint,
19 which was filed on behalf of Pinckney Point, LLC, that
20 the County committed to this being a residential
21 community, because we gave you multiple entitlements?
22 We approved multiple entitlements.

23 A No, it was because you signed the settlement
24 agreement.

25 Q Okay. But you do agree with your complaint where

1 we issued multiple entitlements?

2 A You -- you gave -- you finally gave us the variance
3 --

4 Q You got to say yes or no, and then, you can --

5 THE COURT: And then, you can explain it all you
6 want, but.

7 A Okay. So, --

8 BY MR. ACHURCH:

9 Q Did we give you multiple entitlements?

10 A You gave us -- you gave us multiple entitlements,
11 multiple approvals.

12 Q Okay. And that's the foundation upon which you
13 based that this property had to be a residential
14 community.

15 A Well, that certainly was what the -- the breadth of
16 that agreement was that it was going to be a residential
17 community.

18 Q I'm not asking you about the agreement now, and I
19 appreciate -- I know you want to talk about that some
20 more, but we're talking about the entitlements now.
21 Your lawyer says that you couldn't raise the money,
22 because you couldn't get entitlements. And your
23 complaint says that it had to be a residential
24 community, because you had all these entitlements. And
25 I'm just trying to make sure -- I'm trying to figure out

1 which one it is. So, it had to be a residential
2 community, because you received multiple entitlements.

3 A Well, we didn't have all of our approvals.

4 Q Right. Well, let me ask you about that. As of
5 August of 2011, you got the letter that says your
6 conceptual plan is approved, right?

7 A I believe so, yes.

8 Q And once you get that, if you check this box and
9 this box and this box, you're good, right?

10 A Well, there could be some conditions in that
11 approval that have to be -- some hurdles that have to be
12 jumped over.

13 Q Right. And the only one you were worried about was
14 the septic tank, right? Septic issues.

15 A I'd have to go look at the specific one, but
16 certainly, the septic tank issue came up --

17 Q Right.

18 A -- late in the process.

19 Q Right.

20 A The only one that Mr. Nester complained about was
21 the septic tanks, right?

22 A That's right. Which was after we were again asked
23 to tie into the sewer system in 2011.

24 Q Yeah. You were asked again?

25 A Yes, we were.

1 Q I believe it was -- it was suggested that they
2 might recommend a variance. Is that right?

3 A I -- I wouldn't characterize it that way. I'd have
4 to see that.

5 Q It was an email, right?

6 A It might have been.

7 Q To Mr. Nester, right?

8 A No, I think it was from Tony --

9 Q Oh, I'm sorry, Mr. Criscitiello.

10 A Criscitiello, who's --

11 Q Mr. Criscitiello to Mr. Nester.

12 A Yeah.

13 Q Okay. You'll let Mr. Nester testify about that.

14 A Sure. Yeah.

15 Q Okay. But when you get conceptual approval, you
16 just have to go check the boxes off and you're done,
17 right?

18 A It's not that simple.

19 Q Oh. Well, you've got a -- that's what you --

20 A I mean, some of the boxes could require a lot of
21 work.

22 Q Oh, I understand that. And I didn't want to
23 minimize that, because you've got to go to DHEC and the
24 water company and all those other things. You've got to
25 get all those things from a bunch of other people,

1 right?

2 A Well, first, we had to prove to you all that it was
3 not in the ordinance to make us do that.

4 Q What's that?

5 A To make us go get individual septic tank permits.

6 Q I'm not talking about septic tanks. I'm talking
7 about when you get -- you're a developer, right? You do
8 this all the time.

9 A I do.

10 Q Okay. And when you get conceptual approval in
11 August of 2011, you're there. I mean, you can develop
12 it, as long as you do what they say in that approval,
13 right?

14 A Well, we still have to go engineer the project.

15 Q Right.

16 A And get the other permits that. Once you engineer
17 the project, then, you go get your grading permit, your
18 storm water permit, all of those things. But you can't
19 do that until you have conceptual approval of a site
20 plan that demonstrates that the County -- that this plan
21 is the plan that the County is willing to let you build.

22 Q Right. And that's what that conceptual approval
23 says, this is the plan the County is willing to let you
24 build.

25 A Yes.

1 Q And then, you get the engineering stuff.

2 A Except that the County put conditions on that
3 approval. We have to go sort out those conditions.

4 Q Well, let me just ask you in the general thing. I
5 just want to make sure I understand, and I'd like the
6 jury to understand it. That, once you get that
7 conceptual approval, that says the County says you can
8 build this, right?

9 A Provided you come back to them later and
10 demonstrate, through your planning, that you have done
11 all of -- that -- that your final plan is what your
12 conceptual plan was.

13 Q Exactly. Okay. Okay. And so, you've got to --
14 and to do that, to come back to them, you've got to go
15 to DHEC, and you've got to go to the Beaufort Water
16 Authority, and you've got to get an engineer to do some
17 stuff, right?

18 A There was a lot to do, yes.

19 Q You do all that, and then, you come back for final
20 from the County.

21 A Correct.

22 Q So, once you get the conceptual from the County,
23 you're done with the County 'til you just get these
24 other things that you got to do, and then, you're done.

25 A Unless there are things that are highlighted in the

1 conceptual that have to be worked out before you're
2 willing to go engineer a project.

3 Q Right. Right. And then, the one thing was -- and
4 this one was issued about the septic tanks, correct?

5 A Yes.

6 Q Correct? And you had Mr. Nester on that for you?

7 A I did.

8 Q And in my recollection, there were emails in
9 December or November saying we're going to -- this was
10 -- we'll get this worked out. Do you remember that, or
11 no?

12 A I know that he was working hard to try to --

13 Q Okay.

14 A -- to get the County to do what they were supposed
15 to do.

16 Q Okay. I appreciate that. And you would agree,
17 though, that, by February of '12, that those issues had
18 been worked out.

19 A I'd have to look at the date and look at the
20 letter, but it was worked out in the first quarter of
21 2012.

22 Q Okay. And in the meantime, you weren't waiting on
23 that, right? You were keeping on get -- you were going
24 with engineering plans and doing all that stuff, right?

25 A We -- I would have to go back and look and see

1 exactly what we were doing during that window of time.

2 Q Right.

3 A But we -- we never quit working daily to try to get
4 this project to a point where we could develop it.

5 Q Okay. All right. So, waiting on the septic tanks
6 wasn't holding you up. You were working daily to get
7 these other things.

8 A I would say that it was a pretty significant issue
9 that we needed to resolve.

10 Q Oh, I appreciate --

11 A So, we may have --

12 Q -- I appreciate that. I'm just asking if it held
13 you up. Your testimony was, you kept working on and on.
14 Is that correct?

15 A Well, we may have -- we may have paused until we
16 got that issue resolved, which was what we did every
17 time the County threw a hurdle in front of us. We would
18 -- we would pause, and we would go try to get that issue
19 resolved, whether it was a lawsuit, whether it was a
20 variance that we asked for in '05, for the -- for the
21 reasons that you all said it was important when you
22 signed the settlement agreement in 2011.

23 Q Um-hmm. Um-hmm.

24 A We would have to step back, and then, try to figure
25 out what do to about those hurdles.

1 Q Was money ever a problem with you moving forward to
2 get your permits?

3 A We --

4 Q As far as paying engineers and doing things like
5 that?

6 A We always pay our bills.

7 Q Did you ever have -- did you ever have the
8 engineers hold off?

9 A If we were having -- if we had an issue that
10 involved what they were designing, we would have to tell
11 them to stand -- stand down.

12 Q Right. Right. And my question wasn't whether you
13 paid your bills or not. I mean, if you didn't have
14 money sometimes, did you have the engineers hold off and
15 not do some work?

16 A Oh, no. We always paid our bills.

17 Q That's not my question. My question is, if you
18 didn't have money, did you sometimes not have the work
19 done, because you didn't have the money to pay?

20 A We always had the money to pay them.

21 Q Okay. Well, that's what I wanted to know. Okay.
22 All right. And you agree your -- the genesis of the
23 complaint is, is that, what you allege is, that the
24 County's purchase of this property violated the
25 settlement agreement, right?

1 A Yes.

2 Q Okay. And you would agree that, if ABC, LLC, had
3 bought the property, it would not violate the settlement
4 agreement.

5 A It's a complicated answer for me.

6 Q Well, it wasn't complicated when I asked you the
7 first time, was it? I just want to know if you -- do
8 you have an answer to that question today? Would you
9 agree that, if any other company had purchased the
10 Pinckney Point property, it would not violate the
11 settlement agreement?

12 A If the County was not a party to causing us to be
13 in default of our loan and other -- and our ability --
14 inability to execute the option agreement, then, yes,
15 perhaps.

16 Q Yes, what? It would be a violation?

17 A If the County was not a party to all of those
18 things, then, perhaps, the County wouldn't be
19 responsible.

20 Q And did you say the County was responsible for you
21 being in default on your loan?

22 A I think so, absolutely.

23 Q Okay. And yet, the settlement agreement was dated
24 in 2011, and you got foreclosed on in 2010. Right?

25 A Yes.

1 Q And when the bank foreclosed, you counterclaimed,
2 and said it was the bank's fault.

3 A Well, that was one of the allegations.

4 Q Okay. Well, the County's name wasn't in that
5 foreclosure action anywhere, was it?

6 A I would have to read it to see.

7 Q Okay. I will tell you it wasn't.

8 A Okay.

9 Q And you agreed with me earlier when -- if the
10 County had sold the land to a private entity, there
11 would be no violation of the settlement agreement.
12 Isn't that right?

13 A Well, if the County had bought the land to be able
14 to sell it, then, they absolutely would have been.

15 Q Pardon me?

16 A If -- you said the County sold it?

17 Q If the County sold it somebody else, that wouldn't
18 violate the settlement agreement, would it?

19 A Yes, it would.

20 Q Okay. Well, let me get you to turn to Page 65 of
21 your deposition. Tell me when you're there.

22 A I'm there.

23 Q And about Page 6, the question is:

24 What if ABC, LLC, a private LLC,
25 purchased that Pinckney Point property?

1 Would that violate the agreement?

2 And read your answer.

3 A I don't believe so.

4 Q Okay.

5 A But you said that they purchased it from the
6 County.

7 Q That was the second question. The first one I
8 asked you was, if you agree if ABC purchased, would it
9 violate the agreement. And then, you told me it was a
10 complicated answer. But now, you remember saying, no,
11 you didn't think it would violate the agreement, right?

12 A That's what I said.

13 Q Okay. Now, in fairness, you later told me you
14 didn't want to try and interpret this without your
15 lawyer, correct? You didn't want to speculate on it, do
16 you remember telling me that?

17 A Which item?

18 Q You didn't want to -- you don't want to testify
19 about interpreting contracts without your lawyer. Do
20 you remember telling me that?

21 A I may have.

22 Q Okay. And you believe that the County should have
23 defended its right to that original roadbed, right?

24 A Yes, I do.

25 Q Okay. And you felt like you had yourself in a

1 three-year battle with Agnes Pinckney, because she
2 claimed it was private.

3 A She claimed it was private after the County told us
4 to go ask her if she would allow us to use it.

5 Q Okay. And so, you classified it as being in a
6 three-year court battle against Agnes, correct?

7 A I may have.

8 Q You did. And that was really true, wasn't it?
9 Because the County, once the County got the poles out of
10 the road, the County said, whatever you guys agree to,
11 we'll go with it. Isn't that right?

12 A But in my view, the County should have removed the
13 poles without going to the Court.

14 Q Oh, really?

15 A Yes, oh, really.

16 Q Okay. And so, we should have just gone out there,
17 and removed it?

18 A The same as if somebody parked a car in the middle
19 of the road and just left it.

20 Q Okay..

21 A Took the keys and left it.

22 Q And you agree the County didn't have a deed to it,
23 correct?

24 A The County, in my view, and the view of our title
25 insurance company and our attorney, --

1 Q I won't ask about -- I just --

2 A -- a prescriptive easement over that road that they
3 had maintained since World War II.

4 Q The question is -- my question is, is --

5 COURT REPORTER: I'm sorry, I'm sorry.

6 THE COURT: Okay. Don't talk over each other, you
7 all.

8 BY MR. ACHURCH:

9 Q The question is, do you acknowledge the County
10 didn't have a deed to it?

11 A I don't believe the County had a deed to it, no.

12 Q Right. And what you wanted the County to do, to
13 exert its authority over that road and say, we own this
14 road, right?

15 A You --

16 Q That's what you wanted us to do.

17 A That you had the -- a prescriptive easement over
18 that road.

19 Q Right. And you wanted the County to say, we own
20 it, and that way, it would be a public road, and you
21 could develop your property, right?

22 A Well, the road was a road that was within --
23 contained within a recorded plat that the County had
24 maintained.

25 Q You've got to say yes or no, and then, you can --

1 MR. WALKER: Your Honor, he's explaining his
2 answer, and he's not letting him explain it, and he's
3 re-stating what the witness is testify to.

4 THE COURT: Okay.

5 MR. ACHURCH: No, he's not answering.

6 THE COURT: All right. Well, listen, gentlemen,
7 Mr. Bush, you do have to answer the question yes or no.
8 Then, you can explain it, if you want.

9 A Okay.

10 THE COURT: But you do need to answer the question
11 yes or no.

12 A Okay. Thank you.

13 THE COURT: It's yes, no, or, I don't know. And
14 then, you can explain it.

15 MR. ACHURCH: Right.

16 BY MR. ACHURCH:

17 Q And I believe your testimony, you agree -- you
18 believe, had the County defended their right to the
19 road, we would not have been found -- would not have
20 found ourselves in a three-year court battle against
21 Agnes. Is that a true statement, or no?

22 A Yes.

23 Q Okay. And you previously -- and you also believe
24 the County failed to assert authority to defend the
25 road, and rather, turned to the courts, and asked the

1 courts to decide.

2 A Yes.

3 Q Okay. And you do appreciate that the County has
4 the lookout for the developer and the neighbors, and the
5 other people, right? You would acknowledge that.

6 A I think that's fair.

7 Q Okay. And so, if somebody came out and put poles
8 in your land, then, you wouldn't want the County just
9 coming and saying, well, Bill said he owns it. In other
10 words, you wanted the County to come in and say, we own
11 this road. And it's something you wound up thinking was
12 worth 1.3 million dollars. Ms. Pinckney would have been
13 out 1.3 million dollars. Is that right?

14 A Well, --

15 MR. WALKER: Objection. We have an objection.

16 THE COURT: Okay. Yes, what's your objection?

17 MR. WALKER: The objection is, he keeps misstating
18 what Mr. Taylor said. Mr. Taylor said, I'm not saying
19 -- I mean, Mr. Bush said --

20 THE COURT: Bush. Okay.

21 MR. WALKER: -- I'm not saying that the County
22 owned it; I'm saying that an easement, a prescriptive
23 easement. He keeps coming back and saying, you said
24 that the County owned it, and he hasn't said that yet.

25 THE COURT: Okay. Go ahead and rephrase your

1 question.

2 BY MR. ACHURCH:

3 Q Well, you want -- let's see. Well, do you believe
4 the County failed to assert its authority to defend the
5 road, but rather, turned to the courts, and asked the
6 courts to decide?

7 A And again, yes.

8 Q You do. Okay. I thought that's what I asked. So,
9 you wanted us to defend our rights to the road, and that
10 way, Ms. Pinckney, who, I believe is, she's retired now,
11 right?

12 A I do not know.

13 Q Yeah. She wouldn't have gotten 1.3 million
14 dollars.

15 A I think the County pretty well facilitated her
16 getting that money, yes.

17 Q Because we didn't go in and take the road from her.

18 A Well, you used the example earlier that, if I had
19 fenceposts on my land --

20 Q Um-hmm.

21 A -- would I expect the County to come remove them.
22 And I would say that, if the County had, for forty
23 years, maintained my driveway --

24 Q Um-hmm.

25 A -- so that someone else could access their house --

1 Q Right.

2 A -- and -- and a neighbor put up fenceposts, it
3 wouldn't surprise me at all if the County came out there
4 and removed them.

5 Q Yeah. And if the Court decided that Ms. Pinckney
6 was right, and that road was private, two things would
7 happen. One is, the County would be trespassing, right?
8 And (2) you couldn't develop your property.

9 A The Court never decided that.

10 Q Right. But if they had, you couldn't have
11 developed your property.

12 A If -- that's right.

13 Q Okay.

14 A That's correct. That's why we went to court.

15 Q Right. And that's what you said, well, we went to
16 court, and that's what a person ought to do, right? And
17 you agree, when we went to court --

18 A Well, you -- you -- you asked me a question.

19 Q -- the County said -- let me ask you a question.

20 THE COURT: Okay. Hold on a second. Let him ask
21 the question.

22 A He --

23 MR. ACHURCH: Right.

24 BY MR. ACHURCH:

25 Q And when we went to court, your lawyer put in as an

1 exhibit the County's complaint. The County didn't say
2 we own the road or you own the road or -- we said, just,
3 Court, let us know. Tell us what -- tell us who owns
4 it. Isn't that right?

5 A That's what you did, yes.

6 Q Okay. And this road that you wanted the County to
7 come in and fend for you, you got a five-million-dollar
8 discount on your property, right?

9 A John Pinckney took a five-million-dollar hit.

10 Q Right.

11 A And we got the benefit of it.

12 Q Right. And in your original complaint, in the
13 original complaint -- I don't know if anybody could hear
14 that -- you complained because you thought the purchase
15 of this property was not a wise use of the public's
16 money. Was that part of the original complaint?

17 A Those may have been my words.

18 Q Okay.

19 A I can't recall how you asked the question then, or.

20 Q Okay. And you are concerned about how the County
21 spends their money, right?

22 A I think the -- I think the County should spend
23 money wisely. It seems logical that they would spend
24 taxpayer money wisely.

25 Q And you're concerned about it.

- 1 A As a taxpayer, I think we all should be concerned
2 about it.
- 3 Q Okay. And the Pinckney Point tract, you can access
4 that by water?
- 5 A Yes.
- 6 Q Okay.
- 7 A If you -- if you could get a dock permit.
- 8 Q Okay. But this lawsuit, when you originally
9 brought it, it was really brought to protect the
10 investment of Road, LLC. Is that correct?
- 11 A That was -- it was important to protect their
12 investment.
- 13 Q Okay. And that's why the suit was brought.
- 14 A And Pinckney Point, LLC, also.
- 15 Q Okay.
- 16 A They had an investment in it, as well.
- 17 Q Well, you would agree that the County's purchase of
18 the Pinckney Point tract did not affect the title or
19 ownership of the road tract.
- 20 A The road tract's title and ownership is in Road,
21 LLC.
- 22 Q Okay. So, you would agree, the County's purchase
23 of the Pinckney Point tract did not impact the title or
24 ownership of the road tract.
- 25 A No, it didn't affect the title. And the ownership

1 is the same.

2 Q Pardon me?

3 A It didn't affect the title, and the ownership's the
4 same.

5 Q The same. What do you mean?

6 A Well, it's still Road, LLC.

7 Q Okay. All right. Do you agree the County's
8 purchase of the Pinckney Point tract didn't affect
9 ownership of the road tract?

10 A That's correct.

11 Q All right. And at the time Pinckney Point filed
12 this lawsuit, you couldn't say that Pinckney Point, LLC,
13 had the money to buy the Pinckney Point tract.

14 A You asked me -- was that a question?

15 Q Yes.

16 A That I could -- that they did or did not have the
17 money?

18 A At the time the County purchased the prop -- well,
19 at the time that Pinckney Point, LLC, filed this lawsuit
20 against the County, you couldn't say whether or not
21 Pinckney Point even had the money to buy the road tract
22 -- the Pinckney Point tract.

23 A Oh, we -- we would have been able to raise the
24 money.

25 Q At the time you filed the lawsuit, can you say

1 whether or not Pinckney Point, LLC, had the money to buy
2 the Pinckney Point tract?

3 A Well, we had not finished the -- all the permits
4 and approvals, so we -- we wouldn't -- in order for us
5 to raise money, we had to have all of our permits and
6 approvals.

7 Q Well, --

8 A And --

9 Q And you're explaining your answer first, before you
10 give it to me. So, you're saying you have to have --
11 well, let me ask you -- let me just ask you to go to
12 Page 113 of your deposition. Just let me know when you
13 get there.

14 A I'm there.

15 Q All right. See Page 7 -- I'm sorry, Line 7. I
16 asked you:

17 At the time the lawsuit was filed, did
18 Pinckney Point, at that time, have the cash
19 to buy this property?

20 And what was your answer?

21 A I wouldn't be able to testify to that, but I
22 believe so.

23 Q Okay. But you don't know.

24 A No, I don't know.

25 Q Okay. All right. And --

- 1 A But I will -- I will say this, though. I've been
2 with this company for 43 years, and every project that I
3 attempted to develop, the company came up with the
4 capital to do so, every single one.
- 5 Q At some point.
- 6 A At some point.
- 7 Q But not this time.
- 8 A I think this time they would have, too.
- 9 Q They would have.
- 10 A Yes, sir.
- 11 Q They didn't do it, though, did they? They never
12 did, did they? Before the option expired.
- 13 A We didn't have all of our final approvals, and we
14 couldn't get the capital until the approvals were in
15 place.
- 16 Q But you got the money to buy the land, originally.
- 17 A We did, yes.
- 18 Q You had no -- not one approval, right?
- 19 A That's correct.
- 20 Q And you got fifteen million dollars to buy it. You
21 had not the first approval.
- 22 A The purchase price was -- was less than that.
- 23 Q It was going to be fifteen million dollars.
- 24 A But it wasn't.
- 25 Q But you had the money, right?

- 1 A I think we could have bought it for that, too.
- 2 Q Okay.
- 3 A That was -- that was what we had intended to do.
- 4 Q And there wasn't approval.
- 5 A Well, there's a difference between money to buy the
- 6 land and money to develop real estate, to develop lots.
- 7 Q Right.
- 8 A There's -- it's -- they're called A&D loans,
- 9 acquisition and development loans.
- 10 Q Okay.
- 11 A And I can't say for certain whether we had an
- 12 acquisition development loan with BB&T. It may have
- 13 just been a land loan. I don't know for certain.
- 14 Q Somehow, you got it.
- 15 A We -- we got it, yes.
- 16 Q You got it to buy it. And we've talked about this
- 17 before, you had this conceptual approval from August of
- 18 2012, right? Isn't that right?
- 19 A I think conceptual was 2011.
- 20 Q Actually August '11.
- 21 A Yes.
- 22 Q It was 2011.
- 23 A That's right, yeah.
- 24 Q Okay. All right. And the County contracted to buy
- 25 the land in April of 2013, right?

1 A Yes, sir.

2 Q Okay. And Pinckney Point -- Pinckney Point, LLC,
3 couldn't come in and get its final approval 'til after
4 it bought the land, could it?

5 A Back in '05?

6 Q No. When you were -- you had these entitlements,
7 you say you rely -- we committed this being a
8 residential community, because we gave you all these
9 entitlements, and you didn't have your final approval,
10 because you can't come in and get your final approval
11 'til you pay -- buy the land. You got to own the land,
12 don't you? to get approval.

13 A No.

14 Q Oh, you don't?

15 A No.

16 Q You just go get it for some other owner?

17 A Yes.

18 Q Okay. Are you sure about the County's requirements
19 on that?

20 A Well, I don't think we could -- we can't record a
21 plat. We can't do those kind of things. We can't --
22 but -- I'm confused by the question.

23 Q Okay. To come in and get the -- you've got a
24 conceptual approval. To come in and get the final
25 approval, you -- Pinckney Point can't come in and get a

1 final approval on Pinckney Point when Equity Resources
2 owns it. Can you?

3 A We can act as their agent.

4 Q You could?

5 A Yes.

6 Q If they agreed to it.

7 A If they agreed to it.

8 Q Okay.

9 A Yeah.

10 Q And you agree that, once the option expired,
11 Pinckney Point -- I'm sorry -- ERP, Equity Resources,
12 could do whatever they wanted to with it.

13 A It -- they owned the land. They --

14 Q Right.

15 A They could, yes.

16 Q Right. So, they could. But yet, when you
17 initially filed this lawsuit, you included Equity
18 Resources Partners in it, as well, didn't you?

19 A We did.

20 Q Okay. And you agree, the County purchased the
21 property after the option expired.

22 A They closed on it after it expired.

23 Q Well, they contracted with it after it expired.

24 A They did. They -- right after it expired.

25 Q Right.

1 A Immediately after.

2 Q Well, it was a month, wasn't it?

3 A Yeah, but that's pretty quick to negotiate a
4 purchase and sell agreement, when I was trying to get a
5 variance for five years.

6 Q And a variance, that's something -- that's not a
7 by-right thing, is it? You have to meet some criteria,
8 and it's discretionary, right?

9 A It's discretionary, yes. But technically, it
10 should have been a variance to remove 1,700 feet out of
11 the buffer, instead of a variance to impact the buffer
12 by 132 feet.

13 Q All right. And at the time you originally asked
14 for it, the issue of road ownership had been raised,
15 hadn't it?

16 A It had, yes, I believe that's correct. Yes.

17 Q Okay. And if it was -- and if it was Pinckney's
18 road, they can't give you permission to move Ms.
19 Pinckney's road out of the buffer, can they?

20 A Well, the variance was for on our land.

21 Q Yeah. And you got a -- you also got a -- you've
22 got to put some pipes and stuff in there, too, don't --
23 you've got to put some water pipes, and some electric
24 stuff in there. You've got to have a variance for that,
25 don't you?

1 A Well, there were already overhead electric lines
2 running down the road.

3 Q Right. Yeah, well, you want to put some pipes and
4 lines in there in the buffer, you got to have a variance
5 for that, as well.

6 A If we went to the buffer with it, yes.

7 Q And it had to go through the buffer, didn't it?

8 A Well, for that, I mean, if we had to put a potable
9 water system on site, I mean, technically, you could do
10 that, and we could run the overhead power lines on the
11 poles that were already there.

12 Q Yeah, but that --

13 A I mean, technically. But we -- we wanted a
14 variance to put them underground, and to be able to tie
15 into the domestic water system.

16 Q Sure. And to do that, you needed a variance.

17 A Well, the County said we did.

18 Q Yeah.

19 A I'm not certain we did, but the County said we did.
20 There was a recorded plat that we were building the road
21 in.

22 THE COURT: Mr. Achurch, I apologize for having to
23 interrupt, but the jury needs to take a break. Is that
24 all right with you?

25 MR. ACHURCH: Sure.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, again, do not discuss this case. It wouldn't be
3 appropriate to do so, and we'll be right back with you
4 all. Thank you.

5 JURORS LEAVE COURTROOM 3:30 P.M.

6 BAILIFF: Jury is clear, your Honor.

7 THE COURT: Mr. Bush, you're welcome to step down,
8 sir.

9 A Thank you.

10 THE COURT: Just don't talk about your testimony.

11 A Thank you.

12 THE COURT: Robert, sorry. I didn't mean to cut
13 you off. My foreperson was just mouthing to me, we need
14 a break, we need a break.

15 MR. ACHURCH: I understand how that goes.

16 THE COURT: And I was waiting as long as I could.
17 All right. We're going to go ahead and just take about
18 a ten-minute break. Is that okay with you all?

19 MR. ACHURCH: Yeah.

20 THE COURT: How much more time do you have with
21 him, do you believe?

22 MR. ACHURCH: Thirty minutes.

23 THE COURT: Okay.

24 MR. ACHURCH: Forty minutes.

25 THE COURT: Okay.

1 MR. ACHURCH: I got to do this and go through some
2 of the documents.

3 THE COURT: No worries. No worries. Okay.

4 OFF THE RECORD 3:31 P.M.

5 BACK ON THE RECORD 3:55 P.M.

6 BY THE COURT:

7 BAILIFF: Ready, your Honor?

8 THE COURT: Thank you.

9 BAILIFF: Jury is entering the courtroom, your
10 Honor.

11 JURORS ENTER COURTROOM 3:57 P.M.

12 THE COURT: Please be seated, you all.

13 Thank you. All right. Let's continue, Mr. Achurch
14 and Mr. Bush.

15 MR. ACHURCH: Thank you.

16 THE COURT: Sir.

17 MR. ACHURCH: Your Honor, I was trying to go
18 through here and make sure the things I've -- we've
19 already covered, your Honor.

20 TAYLOR BUSH, CONTINUE

21 CROSS-EXAMINATION, BY MR. ACHURCH:

22 Q Mr. Bush, did the County give Pinckney Point, LLC,
23 a variance by giving the conceptual approval?

24 A I think the var -- technically, the variance was
25 granted in the settlement agreement.

1 Q Okay. But so, the variance got granted, correct?

2 A Yes.

3 Q Okay. And did the County -- was an order entered,
4 declaring that the road was a private road?

5 A I believe so, yes.

6 Q Okay. And those were the two things the County
7 agreed to do in the settlement agreement that was
8 attached to the complaint, correct?

9 A Those were the action things that the County had to
10 do, yeah.

11 Q Okay. Thank you. And when Pinckney Point could
12 not perform under the option, they couldn't exercise the
13 option, you would agree that, after that, they could not
14 -- Pinckney Point, LLC, could not comply with the terms
15 it agreed to do under the settlement agreement.

16 A Well, the terms that -- the obligations we had to
17 Agnes Pinckney and Dot Gmann all were tied to our
18 development of the property.

19 Q All right. And so, once you didn't own the
20 property, you couldn't exercise the option, you could
21 not perform those obligations, correct?

22 A We -- we -- because we weren't developing the
23 property.

24 Q Okay. And I know it sounds funny, but I just --

25 A The answer would be, no, because we weren't

1 developing the property.

2 Q Okay. Thank you very much. All right. When I
3 took your deposition before, when I previously deposed
4 you, you agreed with me, when we were talking, you said
5 you couldn't even hypothesize of a way for Pinckney
6 Point, LLC, to benefit from this lawsuit. Is that
7 correct?

8 A I don't recall. If I said it in my deposition,
9 I --

10 Q Did you previously testify that you couldn't even
11 hypothesize as to how Pinckney Point, LLC, would benefit
12 from this lawsuit?

13 A I'd have to look at the context of what I said
14 there.

15 Q Well, let me get you to look at Page 139 of your
16 deposition.

17 A I'm there.

18 Q Okay. And your deposition was taken -- what day
19 was your deposition taken?

20 A It was taken on February the 11th, 2014, this one.

21 Q Okay. And on Page 139, Line 20, the question was:

22 *Well, tell me, can you hypothesize any*
23 *way at all that Pinckney Point, LLC, is going*
24 *to benefit from this lawsuit?*

25 And what was your answer?

1 A My answer was, no, I can't.

2 Q Okay. But some time -- some -- now -- between now
3 and then, you did, right?

4 A Well, I mean, you had asked me if I could
5 hypothesize any way that it could benefit. And I mean,
6 at the time, I just couldn't think of one.

7 Q Okay. But you did since then.

8 A Well, I -- I don't know how they -- how this all
9 will shake out.

10 Q Okay. And you need -- you do need, at least, -- to
11 develop the Pinckney Point tract, you do agree that you
12 need at least a fifty-foot right-of-way connecting that
13 tract to a public road, correct?

14 A The County requires that, in order to subdivide a
15 property beyond, I think, five lots, it has to connect
16 to a fifty-foot right-of-way.

17 Q Right. Okay.

18 A And I -- which we believe the plat, recorded plat,
19 was that.

20 Q You thought that.

21 A We -- we've had a lot of affirmation from various
22 sources that, that was the case.

23 Q All right. And Ms. Pinckney didn't agree with you.

24 A After we were told to go talk to her and ask her to
25 re-up that obligation, she said, no, not this time.

1 Q Okay. And the roadbed that was actually there is
2 about eighteen or twenty feet?

3 A Well, the roadbed is a one-lane path right now.

4 Q All right.

5 A And I don't know how wide it is, but it's about one
6 car width.

7 Q It's one vehicle width.

8 A Yes.

9 Q So, it looks the same now, like the picture we
10 showed earlier? I know that wasn't the actual road that
11 Road, LLC, owns, but it looks about like that other
12 picture we saw?

13 A No, it's -- it looks like it's being maintained
14 today.

15 Q Okay. Well, the width of it?

16 A I don't -- about one car width.

17 Q Okay.

18 A Yeah. I mean, I don't know if it's eighteen feet
19 wide. Two cars can pass in eighteen feet.

20 Q Okay. And you would agree, the County didn't
21 receive any compensation or payment from settling the
22 lawsuit.

23 A No, I wouldn't agree with that.

24 Q Okay. Well, let me look at -- get you to look at
25 Page 178 of your deposition.

1 A To be clear, I mean, they didn't receive cash or a
2 check.

3 Q Well, let's look at Page 178, and just clarify.
4 You looking on -- you with me?

5 A Not yet. This one goes up to 152.

6 Q Sorry about that.

7 A 178, you said?

8 Q Yes.

9 A Okay. I'm there.

10 Q The question was:

11 *And will you agree with Mr. Kunkel*
12 *that the County did not receive any*
13 *consideration for settling as a result of*
14 *the settlement.*

15 Read your answer, please, into the record.

16 A I'm looking for the line.

17 Q Okay. The question started on Line 3.

18 A Okay.

19 *To the -- I would agree with him to*
20 *the extent -- and to the extent that they*
21 *didn't receive any compensation or payment.*

22 Q Okay. All right.

23 A But I went on to say, they did receive
24 consideration.

25 Q And you're welcome to read that.

1 A Okay.

2 But they received consideration in
3 the sense that it was very important to
4 the County that we -- that the County had
5 opposed the issuance of dock permits. And
6 so, we went to court. They appealed the dock
7 permits, and we went to court, and the Court
8 ruled that the County didn't have standing
9 in order to appeal the dock permit.

10 Q All right. And while we're on this, let me ask you
11 something. Pinckney Point, LLC, appealed that decision
12 about the docks, too, didn't they?

13 A Well, the -- we had -- we had applied for seven
14 docks, which were allowed under the rules.

15 Q Right.

16 A And we had coordinated with the Corps to put
17 together that application, but ultimately, we were
18 issued three docks. And so, we appealed it because they
19 had -- we had asked for seven; they had given us three.
20 We appealed it. The County appealed it, because we
21 wanted the seven. The County appealed it, wanting zero,
22 and the Court actually gave us five. They gave us more
23 than we had.

24 Q Okay. And this is my question to you was, simply,
25 Pinckney Point, LLC, also appealed the DHEC decision

1 regarding the docks, correct?

2 A For -- for a different reason, yes.

3 Q Okay. And because you wanted more.

4 A That's correct, yes.

5 Q All right. And after the settlement with Beaufort
6 County and Pinckney Point about the docks, Pinckney
7 Point continued their appeal with DHEC, correct?

8 A No, I don't -- I think we -- I think we were just
9 trying to resolve that Jackass Island piece. I don't
10 recall exactly.

11 Q You don't recall or -- are you saying no, or you
12 don't recall?

13 A I -- I'm -- I am not clear on that.

14 Q Okay. Because it's some of the stuff your lawyer
15 put in earlier, and I'll come back to that and ask you
16 about that when we get to that.

17 A Okay. And I think --

18 Q But you do agree and admit that Pinckney Point also
19 appealed the decision of DHEC.

20 A Yes.

21 Q Okay. And you can't remember whether or not the
22 deed -- the appeal that Pinckney Point had with DHEC
23 continued on past when the Beaufort County settlement
24 got reached?

25 A Okay. I think the only thing that was left to do

1 was for us to execute the permits.

2 Q Okay.

3 A As I recall.

4 Q Well, that might be something you had to do. Do
5 you know whether or not that appeal that you, Pinckney
6 Point, had, carried on beyond the time that Beaufort
7 County one?

8 A Well, it was all heard at one time.

9 Q Okay.

10 A And the judge ruled on that. So, we didn't appeal
11 the judge ruling.

12 Q Right.

13 A He gave us five docks.

14 Q I'm just asking if you remember.

15 A Okay. And that was my answer, right.

16 Q And you don't remember.

17 A I don't remember.

18 Q Okay. And Pinckney Point and Road, LLC, they made
19 the decision to pay Agnes, correct?

20 A Yes.

21 Q Agnes Pinckney?

22 A Yes.

23 Q And you said earlier, the County insisted on sewer.
24 This is a copy of -- your attorney's already placed it
25 into evidence. I think we -- he did.

1 MR. WALKER: Could I have the exhibit number,
2 please.

3 MR. ACHURCH: I'll actually give you -- I have a
4 copy of it.

5 BY MR. ACHURCH:

6 Q Let me show you what's -- this was previously
7 marked. This is just another copy of a letter that was
8 referenced from Hillary Austin to John Thomas at Edward
9 Pinckney & Associates, of October 10, 2005. Do you
10 remember looking at this earlier?

11 A I don't -- maybe so, yeah. Yeah.

12 MR. ACHURCH: I can't find it. Do you have the
13 exhibit?

14 MR. WALKER: Plaintiffs' Exhibit 4.

15 A 4? Okay.

16 BY MR. ACHURCH:

17 A Okay.

18 MS. LOHR: I'm not sure that, that got marked into
19 evidence.

20 MR. ACHURCH: Pardon me?

21 MS. LOHR: I'm not sure Number 4 got into evidence.

22 COURT REPORTER: It is not.

23 MR. ACHURCH: It is not?

24 MR. ACHURCH: Is it already marked?

25 COURT REPORTER: It's not.

1 MR. ACHURCH: It's not marked? Could we mark this.

2 THE COURT: Thank you, sir. Wanda, that's
3 Defendant's what?

4 COURT REPORTER: Defendant's 2.

5 MR. ACHURCH: I got you confused.

6 THE COURT: Thank you.

7 BY MR. ACHURCH:

8 Q Let me show you what's been marked as Defendant's
9 Exhibit 2. Is that a copy of a letter that John Thomas
10 received on your behalf from Hillary Austin, and it's
11 also got -- looks like you got a carbon copy on it. Do
12 you see that second page?

13 A I do, yes.

14 Q Okay. And is this a letter that you got from
15 Beaufort County Council -- Beaufort County?

16 A Yes.

17 Q All right. And that's dated October 10, 2005?

18 A Correct.

19 Q Okay. In that letter it says, it tells you at that
20 time that you would need to prove adequate legal access
21 to the development of fifty feet, correct?

22 A Correct.

23 Q All right. And it also tells you in Paragraph 2
24 that:

25 *Because this property is zoned rural,*

1 and existing sewer is further than 300 feet
2 from the site, sewer extensions may only be
3 permitted when a documented health condition
4 warrants such an expansion.

5 Correct?

6 A Yes.

7 Q Okay. So, you were on notice from the County that
8 the sewer wasn't going to be an option for you at that
9 time.

10 Do you agree with that?

11 A I'm -- I'm -- we were on notice to what this said.

12 Q Okay.

13 A I mean, it was giving instructions on -- under what
14 circumstances you could extend that service.

15 Q Right. But you were told by the County that, if it
16 was more than 300 feet, you can't get sewer, right?

17 A We were told by this letter under what
18 circumstances it could be given sewer if it was more
19 than 300 feet.

20 Q Okay. And you'd need a variance for that, wouldn't
21 you?

22 A I don't think so. It just says that we would have
23 to document health conditions; that health conditions
24 warrant such an expansion; and not to merely accommodate
25 the new development.

1 Q And do you know if the County was doing its best
2 not to have sprawl?

3 A I don't know what the County was doing in that
4 regard. We were only developing the property based on
5 the zoning, so there was -- whether we did septic or --
6 or tied into the sewer system wouldn't affect the
7 density.

8 Q Okay. Well, if you have a -- if you have sewer put
9 in there, then, other people can tap in off of it. Do
10 you know that?

11 A Well, -- well, if you -- if you try to -- as long
12 as you don't exceed the zoning, --

13 Q Right.

14 A -- everybody that --

15 Q Right.

16 A -- lived there could tap into it, yes.

17 Q Right. And as a matter of fact, in your agreement
18 with Agnes Garbin [sic], you agreed you would not have
19 sewer, correct?

20 A In 2009, --

21 Q I'm sorry, Ms. Pinckney.

22 A Yeah, I think in 2009, in that settlement
23 agreement, we did agree to that.

24 Q Okay. So, you were bound by that settlement
25 agreement with Ms. Pinckney, right?

1 A Yes, we were.

2 Q Okay. And you would agree with me that there are
3 times when you do have entitlements on property, and you
4 still can't find an investor.

5 A No, not in the -- I wouldn't agree with you. It
6 hasn't --

7 Q You wouldn't agree with me on that?

8 A It has not been our case.

9 Q Okay. Well, look at Page 193 of your deposition,
10 please.

11 A Okay.

12 Q And look at Page -- Line 11, on Page 193.

13 A Okay.

14 Q And the question was:

15 *And sometimes you have the entitlements*
16 *on a property, and it's shovel-ready, and*
17 *you still can't find an investor.*

18 Isn't that true?

19 A I said that --

20 Q Read your answer.

21 A I said, *that's true.*

22 Q Okay. And oftentimes, real estate projects don't
23 go as planned, do they?

24 A No, they don't. This one certainly didn't.

25 Q And you would agree -- pardon me?

1 A This one did not.

2 Q Right. And you would agree that it's hard to
3 predict with any accuracy what the market's going to do.

4 A It's hard to predict with any accuracy.

5 Q Okay. And oftentimes, the permitting process can
6 be more lengthy than you anticipated.

7 A Oftentimes.

8 Q Okay. And you told me earlier, the difference
9 between the County buying the property and XYZ
10 developing the property may have been the value of the
11 engineering plans.

12 A Okay.

13 Q Is that correct?

14 A If that's what I said in my deposition, then, yes.

15 Q And you couldn't think of any other difference from
16 Pinckney Point's perspective?

17 A I'd like to look at the context of that question,
18 if you don't mind.

19 Q I don't mind. Yeah. Let's look at Page 201 of
20 your deposition. Just let me know when you get there.

21 A I'm there.

22 Q And I said:

23 *What's different about the County*
24 *owning it as to Pinckney Point, LLC, versus*
25 *XYZ, or XY Developer, LLC, buying it?*

1 You go ahead and read your answer into the record,
2 please.

3 A I said:

4 Well, Pinckney Point, I suppose you
5 could call it intellectual property. They --
6 we may -- they may could have sold to another
7 developer.

8 Q Keep going.

9 A Okay.

10 If someone was wanting to develop the
11 property as a residential neighborhood, they
12 may have seen some value in what Pinckney
13 Point had done up to that point, engineering
14 drawings, for example, those type of things.

15 Q Anything else? The next question was, anything
16 else?

17 A Oh, I'm sorry.

18 Q Read your answer.

19 A Not from Pinckney Point's perspective, probably
20 not.

21 Q Okay. So, that's the difference between the County
22 buying it and somebody else buying it, is the
23 intellectual property and the engineering thing?

24 A That's not the only difference, no.

25 Q Okay. Well, that's what you testified to

1 previously, correct?

2 A I mean, I think you're trying to say that there's
3 -- the only value in the two is the cost of the
4 engineering drawings, and I -- I wouldn't testify to
5 that.

6 Q Well, you said -- well, I was just reading your
7 deposition testimony. You have done real estate
8 projects in Florida, Georgia, North Carolina, South
9 Carolina?

10 A Yes, sir.

11 Q And you had indicated that the permitting process
12 takes patience and perseverance, correct?

13 A It does.

14 Q Okay. And if you had a piece of property, and you
15 were selling it, and someone had given you an indication
16 they weren't going to be able to buy it, you would try
17 to find someone else, correct?

18 A I would -- it depends on the circumstances. I
19 mean, eventually, if there was absolutely no way they
20 were going to buy the property, then, certainly, we
21 would have to go look for another buyer.

22 Q Well, how about if they gave you an indication they
23 weren't going to be able to close? Would you find
24 another buyer then?

25 A If that was all they gave me --

1 Q Right.

2 A -- that they were -- they were getting ready to
3 walk away, and I'd never see them again, I'd have to go
4 find another buyer.

5 Q Okay. If they gave you an indication they weren't
6 going to close. And in this case, you had -- you
7 actually scheduled a closing on March 11, 2013, to buy
8 this property back from ERP, correct?

9 A Correct.

10 Q And it was scheduled, and they gave you a free
11 eleven-day extension, correct?

12 A Correct.

13 Q And you still couldn't close.

14 A We did not make -- make it by then, no.

15 Q Okay.

16 A We didn't have all of our entitlements complete.

17 Q You didn't have your entitlement?

18 A I don't think we had all of our final approvals.

19 Q Does that mean you didn't have any money?

20 A No, I -- I think we've talked about this before, is
21 that, it's very difficult to get someone to invest money
22 into a real estate -- an investor tries to mitigate
23 their risk when they invest money in real estate. And
24 so, they want to be sure that you have all of your
25 approvals before they're willing to put that money out

1 there. And so, to say that we didn't have the money, in
2 the very simplistic sense of the form is, it was not in
3 the account. But that's not to say that we didn't have
4 the ability to get the money.

5 Q Right. But you didn't have the money to close on
6 the 11th.

7 A On the 11th, we didn't have the entitlements
8 necessary to get the money to close, no.

9 Q Did you ever apply for final approval?

10 A I think we -- I think we applied for final site
11 plan approval.

12 Q Okay.

13 A We may have received that.

14 Q Okay. So, your testimony is, you couldn't close --
15 you couldn't close, because you didn't have the
16 entitlements; and therefore, you couldn't get the money.
17 That's the testimony?

18 A That's correct.

19 Q Okay. You were talking to people, right?

20 A Oh, yes.

21 Q All right.

22 A We had a lot of interest.

23 Q Okay. Did you talk to anyone and have money lined
24 up, but just didn't like their terms?

25 A I couldn't testify to that. John Kunkel was

1 handling those conversations.

2 Q All right. So, it's possible -- that's possible
3 that could have had happened. You had investors; you
4 just didn't like their terms.

5 A That's a possibility.

6 Q Okay. And in the projects you've been involved in,
7 I asked you how many of them made money and how many of
8 them lost money. And you believe that the best estimate
9 you could give is more than fifty percent made money.
10 Is that correct?

11 A I would need to refer back to my --

12 Q Okay.

13 A -- deposition to --

14 Q Well, it's on Page 208.

15 A Okay. I just don't want to contradict.

16 Q That's okay. You ready?

17 A I'm ready.

18 Q I asked you on Page -- Line 4, and how many of
19 these projects lost money, as a percentage?

20 And read your answer.

21 A Okay. I don't know. I'm not willing to guess.

22 Q Okay. And, well, they weren't all profitable, were
23 they? And read your answer.

24 A They're not all profitable.

25 Q How many made less money than you thought?

1 A This is?

2 Q If you don't know, you don't know. And then, go
3 ahead and read your answer.

4 A That's a guessing game. We're -- we're
5 very -- I will say, this is a company, we're
6 very good at what we do. And so, when we go
7 into an investment, we, more often than not,
8 make money.

9 Q More than fifty percent of the time?

10 A More than fifty percent of the time.

11 Q Can you get any closer than that?

12 A No.

13 Q Okay. So, as close as you could get is fifty
14 percent of the time, you make money.

15 A I was just agreeing with -- with what you were
16 saying.

17 Q Okay.

18 A That more than fifty percent of the time.

19 Q More than fifty percent of the time, you made
20 money.

21 A I'm agreeing with that.

22 Q Okay.

23 A Yes, more than fifty percent of the time.

24 Q And you never, ever, you never, ever enter a
25 project thinking you're going to lose money, right?

1 A No, sir.

2 Q And you could have bought this property and lost
3 money.

4 A We could have done that.

5 Q Okay. And earlier, you testified, and I don't know
6 if you mis-spoke, but you said Road, LLC, loaned the
7 money to buy Ms. Pinckney's property. You meant Road
8 invested that money, correct? That wasn't a loan to
9 Pinckney Point, LLC, was it?

10 A Technically, how that was structured would be
11 something that I could not answer.

12 Q Okay. Well, you didn't sign a note.

13 A No.

14 Q And they bought -- they paid Ms. Pinckney.

15 A Yes.

16 Q Okay. And your estimate to do the development, not
17 buy the land back, your estimate to do the development
18 was going to be ten million seven hundred thousand
19 dollars.

20 A Okay.

21 Q Is that correct?

22 A That sounds accurate. It's been a long time since
23 we estimated that cost, but.

24 Q I mean, we can look at it. I'll show it, if you
25 like.

1 A If you -- it's up to you what --

2 Q Okay. And the entitlements that you were seeking
3 that you didn't have, you had what you needed from the
4 County, right?

5 A At which point?

6 Q August of 2011.

7 A No. We had -- we had the County imposing this
8 obligation to go get individual septic tank permits.

9 Q Okay.

10 A So, at that point, no, we didn't think we --

11 Q And then, you resolved that in the --

12 A It took several months, but eventually, it was
13 resolved. And by the way, those were months during our
14 option agreement when we were trying to buy the property
15 back. So, we had to sit and wait until that got
16 resolved before we could continue on with our
17 engineering and permitting.

18 Q So, you weren't continuing to press on?

19 A Well, we didn't know what the -- what was going to
20 be required regarding the septic systems. I mean, we
21 had already gone through wanting sewer, not wanting
22 sewer, and now imposing on us the obligation to go get
23 individual permits, which means you've got to go,
24 hypothetically, site plan a house on a lot. And when we
25 haven't sold the lots yet, so we don't know if it's

1 going to be a three-bedroom, four-bedroom house. It's
2 just -- it was an unreas -- unrealistic and unreasonable
3 request, and it wasn't in the rules.

4 Q And you would agree it would be appropriate for the
5 County to want to make sure, if somebody was -- what was
6 the top-priced lot in this development?

7 A I'd have to look at the pricing sheet, but it
8 probably --

9 Q Over a million dollars, right?

10 A We may have had a few that were over that number.

11 Q Yeah. And --

12 A The ones that, perhaps, had individual dock
13 permits.

14 Q And you want to make sure your toilet worked if you
15 built a house on there right?

16 A Well, we had done that. We had a master permit
17 from the State, and we had tested every single lot.

18 Q Right. And there were four lots that you didn't
19 have permits for, and you had to get those -- you had to
20 do those anyway, didn't you?

21 A You would have to let me look at the documentation
22 to refresh my memory about that.

23 Q That's fair. I'll come back.

24 COURT REPORTER: This is our next exhibit?

25 MR. ACHURCH: Yes.

1 COURT REPORTER: Defendant's 3.

2 MR. ACHURCH: Thank you.

3 BY MR. ACHURCH:

4 Q Let me show you what's been marked as Defendant's
5 Exhibit 3, and ask you if you can identify that.

6 A This is a real estate purchase sale agreement
7 between Pinckney Point, LLC, and Road, LLC.

8 Q Okay. And is that the contract whereby Pinckney
9 Point agreed to pay Road, LLC, five million dollars the
10 property that Road paid 1.3 million dollars for?

11 A That's correct.

12 MR. ACHURCH: Your Honor, I'd move this into
13 evidence, please.

14 THE COURT: Okay.

15 MR. WALKER: No objection.

16 THE COURT: Without objection.

17 ITEM IDENTIFIED AS REAL ESTATE
18 AND PURCHASE AND SALE AGREEMENT
19 BETWEEN ROAD, LLC, AND PINCKNEY
20 POINT, LLC, DATED JANUARY 14, 2011,
21 MARKED DEFENDANT'S EXHIBIT NUMBER 3,
22 ADMITTED AS EVIDENCE.

23 BY MR. ACHURCH:

24 Q And what was the down payment, what was the deposit
25 placed on this contract? Look on Paragraph 4.

1 A Ten dollars.

2 Q Ten dollars. And look on Page -- Paragraph 13 on
3 Page 3. So, the purchaser would be Pinckney Point, LLC,
4 for this five-million-dollar contract?

5 A Yes.

6 Q And if the purchaser defaults under the agreement,
7 will you just read that --

8 A Sure.

9 Q -- paragraph 13(b) into the record, please.

10 A By purchaser. If purchaser defaults under
11 this agreement, seller may terminate this
12 agreement, and the deposit paid by purchaser
13 shall be retained by seller as liquidated
14 damages, and as an estimate of seller's
15 actual damages of seller's sole remedy.

16 Purchaser and seller agree that
17 seller's actual damages, in the event of
18 default by purchaser, would be difficult to
19 ascertain because of the uncertainties of
20 the real estate market and fluctuating
21 property values between the effective date
22 and the date of breach.

23 The parties have, thus, agreed upon the
24 liquidated damages provided in this agreement,
25 except for those rights or obligations that

1 *herein specifically survive the closing or*
2 *termination of this agreement, the above shall*
3 *be seller's sole remedy.*

4 Q Okay. So, this contract that Pinckney Point, LLC,
5 had to buy the property from Road, and Road's a
6 plaintiff in this lawsuit, too, the damages that Road
7 would get if Pinckney Point didn't buy it was \$10.00.
8 Is that correct?

9 A That's what it says, yes.

10 Q Yeah. And that's an estimate. That's liquidated
11 damages. You know what that is?

12 A Yes.

13 Q Yeah. It means that's all you get, right?

14 A That's correct.

15 Q And then, you go on to say that, because it's hard
16 to tell, because of the vacillating real estate market,
17 fluctuating property values, but that's a good -- that's
18 a good estimate of Road, LLC's damages, correct?

19 A That's what it says, yes.

20 Q Okay.

21 MR. ACHURCH: If you'll you mark that, please.

22 COURT REPORTER: The next Defendant's Exhibit is
23 Number 4, Forbearance Agreement.

24 MR. ACHURCH: Thank you.

25 BY MR. ACHURCH:

1 Q Mr. Bush, let me show you what's been a copy -- a
2 copy of what's been marked as Defendant's Exhibit 4.
3 It's labeled *Forbearance Agreement*. Is that a copy of
4 the forbearance agreement executed between Pinckney
5 Point, LLC, and ERP, the folks that bought the bank?

6 A It is executed between Equity Resource Partners and
7 Pinckney Point, LLC.

8 Q Okay.

9 A Or it describes the promissory note executed by
10 Pinckney Point, LLC.

11 Q Okay. When I said bought the bank, I meant bought
12 the bank's position in there. Is that correct?

13 A ER -- Equity Resources Partners bought the bank's
14 position, yes.

15 Q Okay. And this is the forbearance agreement where
16 they said they -- we'll put -- we'll stop the
17 foreclosure proceedings. Is that correct?

18 A That's what a forbearance agreement is, yes.

19 Q Okay. And what's the date on that agreement?

20 A December 29, 2011.

21 Q Okay. And look on Page 2, at the top. What does
22 it indicate the principal amount was?

23 A Eight million four hundred and eighty-nine
24 thousand.

25 Q Okay. So, right at eight-and-a-half million?

1 A Yes.

2 Q Okay. And look on Page 10. Are you with me?

3 A Getting there. Okay.

4 Q And it's Paragraph 19. It's says -- it's labeled,
5 *No Equity in the Property*. Will you go ahead and read
6 that into the record, please, that provision of the
7 agreement that Pinckney Point signed.

8 A You agree and acknowledge that you have no
9 equity in the real property, and the indebtedness
10 owed under the loan and the note exceeds the
11 fair market value of the real property. You
12 further specifically agree and expressly
13 acknowledge that the guarantors, either
14 collectively or individually, have no equity
15 in the real property, and have no equity
16 interest, either collectively or individually,
17 in excess of the indebtedness owed under the
18 note in the loan.

19 Q Okay. And when we say, equity, there, that's like,
20 if I own a house that's worth \$100,000.00, and I owe
21 \$80,000.00 on it, I have \$20,000.00 of equity, right?

22 A First time I've -- I've never read a forbearance
23 agreement all the way through, so I -- I'm not sure in
24 what context that equity -- the word equity there
25 references.

1 Q Well, are you familiar with equity, when I say I
2 owe -- I own a house worth \$100,000.00, and I owe 80 on
3 it, so I have equity of \$20,000.00?

4 A I'm familiar with that, yes.

5 Q Okay. Because -- and you're familiar -- you might
6 not have one, but a lot of people have a equity loan on
7 their house. You heard of that?

8 A I've heard of that, yes.

9 Q So, you know what that term means, right?

10 A I do.

11 Q Okay. And on Page 11, who signed this forbearance
12 on behalf of Pinckney Point, LLC?

13 A John C. Kunkel.

14 Q Okay. And he's the vice president of Pinckney
15 Point, LLC?

16 A It says there that he is.

17 Q Okay. And he's also -- what is his role with
18 Arendale Holdings?

19 A He is the CEO, I believe.

20 Q Okay. And look on Page 12. Is Mr. Kunkel the vice
21 president of Stokes Land Group, LLP?

22 A That's what it says here, yes.

23 Q Do you know that to be true, or not?

24 A I believe that's true.

25 Q Okay. All right. Thank you. Now, the 8.6 million

1 dollars -- or 8.5 million dollars in the agreement, that
2 -- you didn't pay that to -- in the forbearance
3 agreement, did you?

4 A I was not involved in this document.

5 Q All right. Well, what that is, is, that's the bank
6 saying, we're not going to foreclose on you; we'll just
7 take your land, right?

8 A Okay.

9 Q And do you know that to be true?

10 A I -- honestly, I've never read through a
11 forbearance agreement, and I'm really not qualified to
12 testify as to what the meaning of it is.

13 Q Okay. Road, LLC, is also a single-purpose LLC,
14 correct?

15 A Correct.

16 Q All right.

17 COURT REPORTER: Next defendant's exhibit is Number
18 5.

19 Q Mr. Bush, let me show you what's been marked as
20 Defendant's Exhibit 5, and ask you if you can tell me if
21 it's a joint motion to dismiss appeal.

22 A It says that, joint motion to dismiss appeal.

23 Q Okay. And will you just read the -- underneath of
24 that?

25 A *The South Carolina Department of Health and*

1 Environmental Control (SCDHEC) and Pinckney
2 Point, LLC, hereby jointly move to dismiss
3 this appeal.

4 Q Okay. And can you tell now, is this a joint motion
5 to dismiss an appeal involving DHEC and Pinckney Point,
6 LLC?

7 A That's what it says, yes.

8 Q Okay. And what's the date of that?

9 A It is -- the stamp on it is May 23, 2013.

10 Q Okay. And look at -- the second page has the
11 signatures on it. Do you see those?

12 A I do.

13 Q And the one, the top one, is Leslie Riley at the
14 McNair firm. Was she representing Pinckney Point, LLC,
15 in its appeal of the DHEC decisions?

16 A She was, yes.

17 Q Okay. And so, this appeal got dismissed. The
18 Pinckney Point aspect of the appeal with DHEC, got
19 dismissed on May 20, 2013, correct?

20 A Correct.

21 Q Okay.

22 MR. ACHURCH: All right. Could you mark that,
23 ma'am.

24 COURT REPORTER: Next defendant's exhibit is Number
25 6.

1 MR. ACHURCH: Six. Thank you.

2 BY MR. ACHURCH:

3 Q Mr. Bush, can you identify Defendant's Exhibit 6 as
4 an email you sent to Walter Nester?

5 A It is.

6 MR. ACHURCH: And your Honor, up at the top of
7 this, it has Mary Lohr's name on there. And I saw some
8 of theirs had Nancy Dennis's name, and I think we can
9 all agree that this is the person whose copy machine it
10 got made on, so. Do you agree with that, your Honor?

11 THE COURT: Is that correct, you all?

12 MR. WALKER: No, that's correct.

13 THE COURT: Okay.

14 MR. WALKER: Very correct.

15 MR. ACHURCH: Thank you.

16 BY MR. ACHURCH:

17 Q And so, Mr. Bush, on May 10, 2011, you all wrote a
18 letter to your attorney talking about the septic tank
19 issues, correct? Is that what this is?

20 A It just says the subject is Pinckney Point. I
21 would need to -- Lorick Fanning is copied on that, so it
22 had to be with -- to do with septic tanks, yes.

23 Q Okay. And you can read through it, if you need to
24 refresh your memory.

25 A Oh, I would.

1 Q Well, go right ahead.

2 THE COURT: Ladies and gentlemen, while he's doing
3 that, if anyone wants to stand up and take a stretch,
4 you are welcome to. I know you all are kind of moving
5 around a little bit.

6 And Mr. Foreperson, I understand that the jury is
7 willing to work up until 5:30, if --

8 FOREPERSON: Yes, your Honor.

9 THE COURT: -- if I'm willing, as well. So, we'll
10 see.

11 MR. ACHURCH: I'm moving along. It's probably more
12 plodding, I apologize.

13 THE COURT: You're absolutely fine.

14 Mr. Bush, just let us know when you're done.

15 A I've -- I'm done. I haven't read it thoroughly,
16 but I've scanned it enough to understand the context.

17 BY MR. ACHURCH:

18 Q Okay. Is this a letter you wrote to Walter Nester?

19 A It is.

20 Q It's dated May 10, 2011?

21 A It is.

22 MR. ACHURCH: Okay. Your Honor, I'd move this into
23 evidence, please.

24 MR. WALKER: No objection.

25 THE COURT: Without objection.

1 ITEM IDENTIFIED AS LETTER FROM
2 TAYLOR BUSH TO WALTER NESTER
3 DATED MAY 10, 2011,
4 MARKED DEFENDANT'S EXHIBIT NUMBER 6,
5 ADMITTED AS EVIDENCE.

6 BY MR. ACHURCH:

7 Q Now, Mr. Bush, I'm going to go to the content of
8 this. In the third paragraph, you see where it says:

9 *Recently, Beaufort County has required*
10 *that subdivisions served by septic must obtain*
11 *individual permits from DHEC.*

12 A Yes, that's what it -- that's what I wrote.

13 Q Okay. And that was an actual Beaufort County
14 requirement, was it not?

15 A That's what I understood when I wrote this email.

16 Q Okay. And in the letter, you said you believe the
17 requirement is driven by a 2009 change in the permit
18 requirements. Is that correct?

19 A That's what I say, yes.

20 Q Okay. And further down, it says you had a meeting
21 with Mr. Criscitiello. And in response, read -- and you
22 see that thing that says, *in response to that meeting?*

23 A Let's see.

24 *In response to that meeting, Tony had*
25 *a verbal discussion with Mr. Terry B. Lyons,*

1 with South Carolina -- SCDHEC. Mr. Lyons
2 told Tony that he believed that we now fall
3 under the 2009 rule, and therefore, must apply
4 -- re-apply.

5 Tony has now issued a letter, copy
6 attached, stating that SCDHEC has taken the
7 position that we now need to apply for and
8 receive a new permit under the 2009 rules,
9 and therefore, the County will require those
10 permits to be submitted with the final DRT
11 package.

12 Q Okay. Now, go to the -- the last paragraph in the
13 letter, you say that -- you tell Mr. Nester, your
14 attorney, you believe Mr. Lyons is wrong in his
15 interpretation, and that your 2000 -- that your 2007
16 approval is no longer valid. Do you see that?

17 A I do.

18 Q So, you tell him you think Mr. Lyons at DHEC is
19 wrong, right?

20 A I am.

21 Q And you ask him to write to Mr. Lyons, go over his
22 head, and go to Leonard Jordan, his boss, and try to
23 convince him that he's wrong, right?

24 A I said I believe it's -- it -- we need to bring
25 this matter to a head. I didn't say go over his head.

1 Q Oh, okay. You said, I would expect a letter would
2 rise to a higher level of importance if it came from
3 Counsel. And you recommended he write a letter, too.

4 A Yes.

5 Q Okay. That's fair.

6 A That's correct.

7 Q Fair enough. Fair enough.

8 A And I was right about that, by the way. Just for
9 the record.

10 Q And you got to use your old septic tank.

11 A Yes.

12 Q Okay.

13 COURT REPORTER: What was that last exhibit? 6?

14 A Yes.

15 COURT REPORTER: This will be Defendant's Number 7.

16 BY MR. ACHURCH:

17 A Thank you.

18 Q Let me show you what's been marked as Defendant's
19 Exhibit 7. And you see at the bottom down here? Are
20 you familiar with this correspondence at all?

21 A It does look familiar.

22 Q Okay. And you see in there where Mr. Criscitiello
23 apologizes to your attorney, Mr. Nester, because he
24 thought he agreed to the wording?

25 A I see that.

1 Q Of the septic? Okay. And then, Mr. Nester writes
2 back, and he wants an affirmation in writing that the
3 condition requiring septic tanks for each lot would be
4 removed from your permit, the conceptual permit,
5 correct?

6 A Let me -- let me read it.

7 Q Okay.

8 A Yes.

9 Q Okay. And --

10 A Robert, would you ask the question one more time,
11 just so I can answer correctly.

12 Q Yeah.

13 MR. ACHURCH: First of all, your Honor, I would
14 move this into evidence.

15 THE COURT: Okay.

16 MR. WALKER: No objection.

17 THE COURT: Without objection. Thank you. Number
18 7 is in evidence.

19 MR. ACHURCH: Thank you.

20 ITEM IDENTIFIED AS EMAILS BETWEEN
21 ANTHONY CRISCITIELLO AND WALTER NESTER,
22 MARKED DEFENDANT'S EXHIBIT NUMBER 7,
23 ADMITTED AS EVIDENCE.

24 BY MR. ACHURCH:

25 Q Now, Mr. Bush, the one correspondence from Mr.

1 Nester to Mr. Criscitiello is, he's asking that the
2 August 2011 conceptual approval of the DRT for this
3 project is deemed satisfied. Do you see that?

4 A I do.

5 Q And what was Mr. Criscitiello's response on
6 February 9, 2012.

7 A He said:

8 *Walter, yes it is. Please prepare*
9 *necessary documents for final approval, as*
10 *per County procedures.*

11 Q Okay.

12 A But this highlights, though, that -- this first
13 letter when I identified -- when the problem was
14 brought to our attention was May 10, 2011, and it took
15 until February 9, 2012, to get this issue resolved,
16 which is --

17 Q Well, I have other -- I have other documents.

18 A Okay.

19 Q But that was the -- that was the final.

20 A Okay.

21 Q And I don't know if you saw the ones to Mr. Nester,
22 but. But you would agree, at least, by then, you had an
23 official resolution to the issue, correct?

24 A We finally got an official resolution to the issue,
25 yes.

1 COURT REPORTER: Defendant's Number 8 marked.

2 MR. ACHURCH: Thank you.

3 BY MR. ACHURCH:

4 Q Let me show you what's been marked as Defendant's
5 Exhibit 8. And can you tell me who Willy Powell is?

6 A Willy Powell is a civil engineer with Ward Edwards.

7 Q Did he represent Pinckney Point in help in getting
8 some permits and things?

9 A He did.

10 MR. ACHURCH: I'd move this into evidence, your
11 Honor.

12 THE COURT: Any objection?

13 MR. WALKER: Your Honor, I don't know that this
14 witness is familiar with it. It's not his email
15 account. It's something between two strangers, so.

16 MR. ACHURCH: I'd say it --

17 MR. WALKER: So, we would object to it coming in
18 simply because this engineer, an independent contractor,
19 wrote somebody else an email that wasn't even copied to
20 this -- to the witness. The other emails that we've
21 entered have involved either the witness or his lawyer.

22 THE COURT: Let me see it, sir.

23 MR. WALKER: Mr. Powell was an engineer who handled
24 limited issues. He was not involved in all the
25 entitlements. We object. Sorry. I should have said

1 that in the beginning. We object.

2 THE COURT: So, is this something he can testify to
3 that he was familiar with at the time, or can some other
4 witness testify to this? I'm asking you, Mr. Achurch.

5 MR. ACHURCH: Oh, and I apologize.

6 THE COURT: I'm asking you.

7 MR. ACHURCH: If -- if -- I'm -- I'm --

8 THE COURT: Is there someone else that can testify
9 that they were a part of this, or?

10 MR. ACHURCH: It's possible, Judge. Let me just
11 ask the witness a question about it.

12 THE COURT: Okay.

13 MR. ACHURCH: And that might resolve it.

14 THE COURT: Okay.

15 BY MR. ACHURCH:

16 Q Mr. Bush, on June 21, 2012, had the project arisen
17 from the ashes, having been on hold due to market and
18 legal issues?

19 MR. WALKER: Objection, your Honor, to that
20 question. He's just trying to do indirectly what he
21 can't do directly.

22 THE COURT: I understand, but if he wants to, he
23 can ask that question.

24 MR. WALKER: Sitting and staring at the email and
25 asking it like that? All right.

1 THE COURT: Well, now that you made it clear.

2 BY MR. ACHURCH:

3 A Would you ask the question again, please.

4 Q Yeah. In June 21, 2012, did the project arise from
5 the ashes --

6 THE COURT: Okay.

7 Q -- and start over again?

8 THE COURT: Now -- okay. Now we aren't going to do
9 it. Now that both of you all have read straight from
10 the email. All right. I don't think he can testify as
11 to that. If you have another witness that can, fine.

12 MR. ACHURCH: Your Honor, I can do it in a less --
13 paraphrase it.

14 BY MR. ACHURCH:

15 Q Was the project ever on hold because of market and
16 market conditions and legal issues?

17 A It was on hold for legal issues.

18 Q How about market issues? Market conditions?

19 A No.

20 THE COURT: Are we going to be wrapped up with Mr.
21 Bush by 5:30?

22 MR. ACHURCH: Yes, ma'am.

23 THE COURT: Thank you. From all sides. Everybody.

24 MR. ACHURCH: Me, too, Judge.

25 THE COURT: Okay.

1 MR. ACHURCH: I apologize to the Court, and to the
2 jury.

3 THE COURT: Okay.

4 COURT REPORTER: Next is Defendant's 9.

5 BY MR. ACHURCH:

6 Q Can you identify Defendant's Exhibit 9?

7 A This is an email from me to Mr. Wooddall.

8 Q Dated September 25, 2012?

9 A Yes, it is.

10 MR. ACHURCH: I'd move this into evidence, your
11 Honor.

12 MR. WALKER: No objection.

13 THE COURT: Without objection.

14 ITEM IDENTIFIED AS EMAIL FROM
15 TAYLOR BUSH TO LEE WOODDALL,
16 DATED SEPTEMBER 25, 2012,
17 MARKED DEFENDANT'S EXHIBIT NUMBER 9,
18 ADMITTED AS EVIDENCE.

19 BY MR. ACHURCH:

20 Q And in this, Mr. Bush, you're telling -- just read
21 the middle paragraph, please.

22 A Okay.

23 John Irby continues to touch base from
24 time to time regarding any permitting, but
25 there has been no change in that regard. We

1 are now almost complete with our final
2 engineering, and in fact, are beginning now
3 to put together tighter budgets. Soon, we
4 will be submitting those plans for final DRT
5 approval and permits. As those permits and
6 approvals come about, I will be updating the
7 report.

8 Q Okay. Thank you.

9 COURT REPORTER: Next is Defendant's 10.

10 MR. ACHURCH: Thank you.

11 BY MR. ACHURCH:

12 Q Defendant's Exhibit 10, is this a copy of the
13 Pinckney Point permit status?

14 A It is a copy of a status report, yes.

15 Q Is that something that you would have given to ERP?

16 A I seem to recall that the format that I gave it to
17 them in was a different format.

18 Q Okay. This was prepared by you?

19 A I don't recall. It may have been prepared by our
20 engineer. I just -- I don't recall.

21 Q Okay. Was this something prepared on behalf of
22 Pinckney Point, LLC?

23 A It was, yes.

24 Q Okay. And does it address the permits that you
25 have and don't have, and the things you're progressing

1 on towards your development?

2 A Some of them.

3 Q Okay. And I see one of them is DHEC approval of
4 the water system on site. That happened on 10/23/12,
5 correct? according to this.

6 A According to this, yes.

7 Q Okay. And so, this document would have to be a bit
8 older than that, right?

9 A Or it could be that -- yeah, I mean, it could be
10 that date, I suppose.

11 Q Okay.

12 MR. ACHURCH: And your Honor, I'd move this into
13 evidence.

14 THE COURT: Any objection?

15 MR. WALKER: No objection.

16 THE COURT: Without objection.

17 MR. ACHURCH: I think it's an attachment to
18 something that already got entered.

19 THE COURT: Okay.

20 MR. ACHURCH: I'm not positive, Judge.

21 ITEM IDENTIFIED AS COPY OF PINCKNEY

22 POINT PERMIT STATUS,

23 MARKED DEFENDANT'S EXHIBIT NUMBER 10,

24 ADMITTED AS EVIDENCE.

25 COURT REPORTER: Number 11, Defendant's.

1 MR. ACHURCH: Thank you.

2 BY MR. ACHURCH:

3 Q Can you identify Number 11, please, Mr. Bush?

4 A This is an email. It -- let's see. It appears to
5 be an email chain.

6 Q Is it an email chain between you and Dan Keefer at
7 -- is it Whitmire? What's Keefer Jones? Whitmer Keefer
8 Jones?

9 A You know, this is Dan Keefer writing to somebody
10 named John.

11 Q Well, there's a chain of them.

12 A The next one is from Jon Rembold to Walter Nester.
13 So, I'm not sure which one you're referring to.

14 Q Well, if you can't identify them, that's okay. Can
15 you identify this email chain? One of them is --

16 A I -- I --

17 Q One of them says -- it's from Dan Keefer to Walter
18 Nester and Taylor Bush. It's --

19 A I see that one.

20 Q At the top, it says, pages 6 through 15.

21 A I see that one. Oh, I'm looking at 3 of 15.
22 Sorry. 6, 15.

23 Q What's going on in this email here?

24 A This is from me to --

25 Q Mr. Keefer wrote to you?

1 A Oh, from Dan to me. He's saying that:

2 Ray Cook has prepared a plat to be
3 included with the latest septic permit review,
4 basically a preliminary plat.

5 You want me to keep reading?

6 Q Well, what's it for? What's the plat for?

7 A I'm -- I'm not sure. It looks like it may be for
8 the permit purposes. I'm trying to remember who Ray
9 Cook was. He must be a surveyor. It looks to be
10 preparation of a plat.

11 Q Can you identify what these are about?

12 A Well, as you're approaching the final stages of
13 getting your approvals, you have to get a preliminary
14 plat approved. So, what you're doing there is, you're
15 taking all of this technical information, and you're --
16 you're converting it into a -- a document that has very
17 specific dimensions and easements and setbacks, and all
18 of those things that. Because the plat, ultimately, is
19 going to be recorded, and all of the things that are
20 written onto the plat are going to be things of record.
21 So, later, when you're ready to subdivide, when you're
22 ready to -- that's actually the official subdivision of
23 the property.

24 Q Okay.

25 A When the plat is recorded.

1 Q Okay. And you've got to get that to -- that's one
2 of the things you've got to do to get your final
3 approval, correct?

4 A It's another step, yes.

5 Q Okay. And that was on -- and who was doing that
6 for you?

7 A It looks like -- the back of that page. Ray Cook
8 was doing that for us.

9 Q Okay. And that was in October of 2012?

10 A It was.

11 Q Okay. Thank you.

12 COURT REPORTER: Next is Defendant's Number 12.

13 MR. ACHURCH: Thank you.

14 BY MR. ACHURCH:

15 Q Can you identify Number 12, Mr. Bush?

16 A This is an email from me to John Irby.

17 Q Okay. And attached to that is a copy of a tracking
18 report, *Pinckney Point Permits and Approvals Summary*?

19 A It is, yes,

20 Q Okay. And does that chart accurately depict the
21 status of the permits and approvals as of October 30,
22 2012?

23 A It most likely does.

24 Q Okay.

25 MR. ACHURCH: And I'd move this into evidence, your

1 Honor.

2 THE COURT: Any objection?

3 MR. WALKER: No objection, your Honor.

4 THE COURT: Without objection.

5 ITEM IDENTIFIED AS EMAIL FROM TAYLOR
6 BUSH TO JOHN IRBY, AND PINCKNEY POINT
7 PERMIT AND APPROVALS SUMMARY,
8 MARKED DEFENDANT'S EXHIBIT NUMBER 12,
9 ADMITTED AS EVIDENCE.

10 MR. ACHURCH: Thank you.

11 COURT REPORTER: Next, defendant's exhibit is 13.

12 BY MR. ACHURCH:

13 Q Can you identify Number 13 for me?

14 A This is an email dated December 13, 2012, from Dan
15 Keefer to Jon Rembold, and to me, and to Walter Nester.

16 Q And what's going on in that email? What's it
17 discussing?

18 A It's talking about that -- he's -- he's saying
19 that:

20 As John indicated below, we have the
21 draft of the items ready for submittal.
22 We'll need one last review with the team
23 prior to the submittal. As a starting
24 point, I've attached the project narrative
25 for everyone to review.

1 And he tells Walter specifically what he's to do
2 and what I'm to do.

3 Q Okay. And what kind of submittal are you doing
4 there?

5 A Let me see. It seems to be the plat.

6 Q Okay. Is that a plat -- do you need that to get
7 your final approval from the County?

8 A I think so, yes.

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

10 A This is dated December 13, 2012.

11 Q Okay.

12 MR. ACHURCH: And your Honor, I'd move that into
13 evidence, please.

14 MR. WALKER: No objection.

15 THE COURT: Without objection.

16 ITEM IDENTIFIED AS EMAIL FROM DAN
17 KEEFER TO JON REMBOLD, TAYLOR
18 BUSH, AND WALTER NESTER, DATED
19 DECEMBER 13, 2012,
20 MARKED DEFENDANT'S EXHIBIT NUMBER 13,
21 ADMITTED AS EVIDENCE.

22 COURT REPORTER: Next defendant's is Number 14.

23 BY MR. ACHURCH:

24 Q Can you identify Defendant's Number 14, Mr. Bush,
25 please?

1 A This is a letter from me to DHEC.

2 Q Okay. It's to you --

3 A I'm sorry, I'm sorry. I'm sorry. It's from DHEC
4 to me.

5 Q Okay. And they're giving you some approval?

6 A It appears that we were relocating some lots,
7 moving some lots around, or lot lines around.

8 Q Okay. And there were some different lots that
9 actually did need -- there were four lots that need --
10 that actually did need new septic approval, correct?

11 A Let's see. Well, he talks about that we have
12 submitted individual applications for engineer design
13 packages for five lots.

14 Q Okay.

15 A We've revised the numbering on the document. This
16 could have -- this could have easily been something that
17 was generated from comments during the approval process
18 for final conceptual approval. It's not uncommon to
19 determine that some lot lines need to be adjusted here
20 or there.

21 Q Okay.

22 A And refined. So, that's what this appears to be is
23 -- is --

24 Q This is something Pinckney Point, LLC, needed from
25 DHEC to get -- to move forward with final approval.

1 A Well, this may have been generated from comments
2 from staff, to go back to DHEC and make these
3 adjustments. It's not clear to me. I mean, we already
4 had a DHEC approval, but for some reason, we were going
5 back and asking to modify that approval, and make some
6 adjustments.

7 Q Okay.

8 A Is what this appears to be.

9 Q This is a letter that came to you regarding the
10 Pinckney Point subdivision, correct?

11 A It is.

12 Q Okay.

13 MR. ACHURCH: I'd move it into evidence, your
14 Honor.

15 MR. WALKER: No objection, your Honor.

16 THE COURT: Without objection.

17 MR. ACHURCH: Thank you.

18 ITEM IDENTIFIED AS LETTER FROM
19 DHEC TO TAYLOR BUSH,
20 MARKED DEFENDANT'S EXHIBIT NUMBER 14,
21 ADMITTED AS EVIDENCE.

22 MR. ACHURCH: And this is the last one I'll have to
23 do.

24 THE COURT: Thank you.

25 MR. ACHURCH: I would note that I didn't start 'til

1 way after.

2 COURT REPORTER: Defendant's Number 15.

3 MR. ACHURCH: Thank you.

4 BY MR. ACHURCH:

5 Q Mr. Bush, can you identify these? There's a series
6 of emails between you and Mr. Kunkel?

7 A Well, there's an email in here from John Irby to
8 me. So, there's -- there's more than just between me
9 and --

10 Q But these are in emails you either sent or
11 received.

12 A Let's see. Yeah. I'm at 1 -- I'm either -- yes.
13 I either sent or received or was copied.

14 MR. ACHURCH: I'd move these into evidence, your
15 Honor.

16 THE COURT: Any objection?

17 MR. WALKER: Just taking a quick look. I feel a no
18 objection coming on. No objection. That's my last one
19 of the day.

20 THE COURT: There you go.

21 ITEM IDENTIFIED AS SERIES OF EMAILS,
22 MARKED DEFENDANT'S EXHIBIT NUMBER 15,
23 ADMITTED AS EVIDENCE.

24 BY MR. ACHURCH:

25 Q All right. Mr. Bush, will you look at an email of

1 Tuesday, March 12, 2013 that's in that package?

2 A Let's see.

3 Q To you and John.

4 A You mean February 12th?

5 Q No, March 12, 2013.

6 A March 12th? Oh, I see. Okay.

7 Q Okay. And is this an email from you to Mr. Kunkel,
8 and is it John -- Hugh Connerty?

9 A That's correct.

10 Q Who is he?

11 A Hugh Connerty was, at the time, was the CEO of our
12 company.

13 Q Okay. Which company?

14 A It would be Arendale Holdings.

15 Q Okay.

16 A Yeah.

17 Q All right. So, do you work -- you work for
18 Arendale Holdings?

19 A I do not.

20 Q Okay. All right. And what do you -- what you do
21 -- well, it speaks for itself. Will you just read this
22 into the record, please. Read that into the record.

23 A *Hugh and John: John Irby has given a short*
24 *answer. See below. Since it appears they*
25 *are unwilling to negotiate an extension, and*

1 given that we are unable to close the
2 transaction, I think my focus now should be
3 on trying to create the most value in the
4 Road, LLC, parcel. This can best be
5 accomplished by completing the entitlements.

6 I believe I should try and forge a
7 cooperative effort with Irby to complete the
8 site plan approval, dock permit, et cetera, and
9 facilitate an assignment of those documents
10 to Equity Resources, as required in their
11 agreement. They would, of course, have to
12 agree to cover any related costs, such as
13 the \$90,000.00 water fee necessary to complete
14 the site plan approval.

15 Keep in mind that none of these
16 entitlements, including the docks, can
17 actually be used unless sufficient access
18 is acquired from us. I would hope that
19 the fully entitled package would be
20 attractive enough to both them and a
21 potential buyer that we could capitalize
22 on the easement.

23 I also think that sharing the budgets
24 would serve us better, in that they may then
25 view the property as simply too valuable as

1 a development tract or conservation easement
2 to limit its use to hunting.

3 Thanks for the effort that you made
4 over the past few weeks. Let me know how
5 you wish for me to proceed.

6 Q Okay. Thank you.

7 COURT REPORTER: The next defendant's is 16.

8 THE COURT: Thank you.

9 BY MR. ACHURCH:

10 Q Can you identify Defendant's Number 16, please?

11 A This is an email dated April 1, 2013, from me to
12 John Irby.

13 MR. ACHURCH: Okay. And then, your Honor, I would
14 move this into evidence.

15 MR. WALKER: No objection.

16 ITEM IDENTIFIED AS EMAIL FROM
17 TAYLOR BUSH TO JOHN H. IRBY,
18 DATED APRIL 1, 2013,
19 MARKED DEFENDANT'S EXHIBIT NUMBER 16,
20 ADMITTED AS EVIDENCE.

21 BY MR. ACHURCH:

22 Q And in this, you're telling him that you'd like to
23 work with him to help develop and market the property,
24 even if he owns it and you don't. Is that correct?

25 A I would need to read it to --

1 Q Okay. Go right ahead.

2 A -- to testify to that.

3 Okay. I've read it. What was your question again,
4 please?

5 Q You're discussing with him making yourself
6 available to assist in developing the property, and
7 telling him about the knowledge that you gained about
8 the property.

9 A Yes.

10 Q All right. I want you to read, please, the first
11 -- well, in the first paragraph, if you'll start off at
12 the third sentence. It starts off with, it is
13 unfortunate. Would you read the rest of that paragraph,
14 into the record, please.

15 A *It is unfortunate that we were not able to*
16 *secure the capital in time to meet the*
17 *deadline. I do want you to know that, while*
18 *our efforts through this process have been*
19 *genuine, we were not able to raise the funds*
20 *due to tightness in the capital markets*
21 *right now.*

22 Q Okay. And what's the date of that email?

23 A April 1, 2013.

24 Q Okay. Thank you. Your attorney marked this
25 settlement agreement with Agnes Pinckney dated November

1 2009. You would agree, Beaufort County was not a party
2 to that agreement, correct?

3 A The 2009?

4 Q Yes.

5 A No, they were not.

6 Q Okay. And there's a contract of the settlement
7 agreement between Pinckney Point, LLC, and Dorothy
8 Gnann, dated August of 2010. You would agree, Beaufort
9 County's not a party to that.

10 A I would agree.

11 Q Okay.

12 MR. ACHURCH: And Plaintiffs' Exhibit --
13 Plaintiffs' Exhibit 76, do you have that?

14 COURT REPORTER: 76, did you say?

15 MR. ACHURCH: Yes, ma'am. Thank you.

16 BY MR. ACHURCH:

17 Q Let me show you what's been marked as Plaintiffs'
18 Exhibit 76, Mr. Bush, and ask you to turn to the last
19 page of that exhibit, or the last on the whole side. Up
20 at the top, it's Number 255, top-right. Do you see
21 that?

22 A Oh, yes.

23 Q Right here. All right. And this document is --
24 you previously identified as the first amendment to the
25 settlement agreement, which concluded with the right-of-

1 way parcel deed, correct?

2 A It included with it in what regard?

3 Q Well, attached to the exhibit. This is your
4 exhibit, the first amendment to the settlement
5 agreement. And it had included with it a right-of-way,
6 the deed to the right-of-way.

7 A The deed.

8 Q The limited warranty deed.

9 A Right.

10 Q Do you see that? Okay. So, that's the deed from
11 Agnes Pinckney and to -- now, is it going to be to Road,
12 correct?

13 A But you're asking me -- what is this?

14 Q Well, this is the agreement. You already
15 identified it through your lawyer. And I'm just asking
16 you, would you agree that the road parcel was deeded,
17 and up here, this right here, this says:

18 *Subject to an easement for vehicular*
19 *access for ingress and egress, over and above,*
20 *across a twenty-foot dirt road.*

21 Do you see where it says that?

22 A I see that, yes.

23 Q Okay. All right. And you would agree that, when
24 the County settled into the -- entered into the four-way
25 settlement agreement, I think, later we were calling it

1 a -- plaintiff was calling it a six-party settlement
2 agreement -- that, that wasn't a rubber stamp on the
3 development itself? They gave you the road and the
4 variance that's in here, but you still had to go through
5 the permitting -- the rest of the permitting process,
6 correct?

7 A I felt that it was -- that we were getting the --
8 all of the approvals necessary from the County, other
9 than just your typical things, like a plat approval and
10 all the more technical-type things.

11 Q Yeah, yeah.

12 A But all these issues that were very subjective, in
13 my view, meaning that somebody could just say, hey, we
14 want you to do this, I felt those things were behind us.

15 Q Okay. And but, you agree, you had to go through
16 and do the technical things, still.

17 A I've never been afraid of the technical permitting
18 process.

19 Q You just --

20 A It's a --

21 Q You knew how to do that.

22 A Sure.

23 Q All right. And would you look at Plaintiffs'
24 Exhibit Number 79?

25 COURT REPORTER: Plaintiffs'?

1 MR. ACHURCH: Plaintiffs' 79.

2 COURT REPORTER: These are all the plaintiffs'.

3 MR. ACHURCH: It'll be the last one. It was the
4 last one.

5 BY MR. ACHURCH:

6 Q Can I get you to look at Number 79, please. And
7 see the document in there labeled, *Plaintiff Road and PP*
8 *106?*

9 A I do.

10 Q Okay. And that's the *Pinckney Point Permits and*
11 *Approvals Summary?*

12 A It is.

13 Q Okay. And that's an accurate summary of where you
14 were in the approval process at that time?

15 A I feel certain that it was.

16 Q Okay. And where it says, *Final Site Plan Approval*,
17 it says, *comments: Beaufort County DRT not started.*
18 And it would take 90 days, minimum to do it. Is that
19 correct?

20 A Let me find the one you're referring to. *Final*
21 *Site Plan Approval?*

22 Q Right.

23 A *Beaufort County DRT not started, 90 days minimum,*
24 *yes.*

25 Q Okay.

1 A That's what it says.

2 Q And then, these other ones under here, under the
3 lots, the MOA's and things, they ask for the status, and
4 you either put requested or not requested, and then, how
5 long it will take to get, correct?

6 A That's correct.

7 Q Okay. And these ones, except for the Beaufort
8 County DRT, these are things that you needed from other
9 folks, right?

10 A It is. That is correct, yes.

11 Q Okay. Thank you.

12 A Um-hmm.

13 MR. ACHURCH: That's all I have, your Honor. Thank
14 you. Thank you, Mr. Bush.

15 THE COURT: Thank you.

16 MR. WALKER: We have four minutes, and I'm going to
17 try to do it in four minutes. Okay?

18 TAYLOR BUSH

19 RE-DIRECT EXAMINATION BY MR. WALKER:

20 Q Okay. And I'm going to go backwards. So, you were
21 asked to look at Defendant's 15. Do you have that in
22 front of you? A series of emails he had you read from?

23 A I do not have it.

24 THE COURT: Wanda, I think, took it all back.

25 MR. WALKER: Okay. I'm sorry.

1 BY MR. WALKER:

2 A Thank you.

3 Q You were asked to read the last page, but first,
4 I'd ask you, in this email exchange in March, March, 12,
5 '13, did you know at all about the County and the
6 County's interest in the property when this email
7 exchange happened in March 2013 and April -- 3, 2013?

8 A No. No, it's March 12, 2013.

9 Q All right.

10 A March 12, 2013.

11 Q Did you know about the County's interest in the
12 property at all?

13 A No.

14 Q All right. If you would go to the second page,
15 there's an email from John Irby to you, dated Tuesday,
16 February 12, 2013. Do you see that?

17 A February 22, 2013.

18 Q Underneath that.

19 A Oh, yes. Okay.

20 Q It's to -- from John to you?

21 A Yes.

22 Q And what does he say?

23 A Well, he's addressed it to me and John Kunkel, and
24 he says:

25 John, Taylor. Lee and I have met and

1 talked with our partners. We think it is
2 best to stick to the terms of your option
3 agreement. We just don't want to lock the
4 property up any longer. If you are not able
5 to exercise the option prior to its expiration
6 later this month, and we have not made other
7 commitments or plans, we will certainly try
8 to entertain discussions at later dates, if
9 you are able to firm up financial backing to
10 support your endeavors.

11 Q Now, I want to turn this email that was Defendant's
12 Exhibit 16. Do you have that there?

13 A I do not.

14 MR. WALKER: Sorry. I can hand him mine, if that's
15 okay.

16 THE COURT: Please.

17 MR. WALKER: All right. Speed it up.

18 BY MR. WALKER:

19 Q And I'll make it easy for you, too. I underlined
20 part of a sentence, the second sentence -- I mean, the
21 second paragraph in that. Do you see that?

22 A I do.

23 Q And had you had a conversation with John Irby
24 shortly before that April 1 email?

25 A Had I had a conversation with them?

1 Q Yes.

2 A Before this email?

3 Q Yes.

4 A I can't testify whether I had or not.

5 Q Would you read the part of the email that's
6 underlined that --

7 A Okay.

8 Q -- Mr. Achurch didn't have you read?

9 A Okay.

10 *In our conversations, you did mention*
11 *that you and your partners did not have any*
12 *immediate plans for the property.*

13 So, yes, apparently, I had had a conversation with
14 him.

15 Q In your emails back and forth that were read, were
16 you at all trying to stay in good favor with Equity
17 Resources?

18 A Absolutely.

19 Q Why would you want to do that?

20 A Well, we wanted to buy the property, and we wanted
21 to -- to work with them to get to that end.

22 Q All right. Also, you were asked about emails about
23 from December 2012 involving some items for submittal.

24 And there was an email at the bottom from Jon Rembold.

25 Who is he? Who did he work for?

1 A He worked for Ward Edwards. He was our civil
2 engineer.

3 Q All right. And it explains the context, so I'm
4 going to have you read this part, Taylor, right there,
5 from this email that's been admitted Defendant's Exhibit
6 13. And give us the date of that email.

7 A November 15, 2012. It's an email from Jon Rembold
8 to me. A copy to Dan Keefer and Walter Nester.

9 Taylor, Dan and I met yesterday and
10 reviewed the final DRT application checklist.
11 We're at the point now that we're just
12 ensuring we have all the duties attended to
13 and have our respective liaison responsibilities
14 met or identified. The reality is that we are
15 probably 95 percent ready to submit the package.

16 Q Okay. Is he talking about 95 percent ready to
17 submit the package for final site plan approval?

18 A Yes.

19 Q What is the date?

20 A November 15, 2012.

21 Q Thank you, sir. You mentioned that there had been
22 a time when there was a suspension of activity because
23 of legal issues. Do you remember that?

24 A I do.

25 Q Were you referring to the legal issues --

1 MR. ACHURCH: Your Honor, I object.

2 BY MR. WALKER:

3 Q Well, which legal issues were you referring to?

4 THE COURT: Thank you.

5 BY MR. WALKER:

6 A The road litigation was the biggest noose around
7 our neck.

8 Q After that, when there were questions about the
9 septic tanks and the sewer, did you suspend because of
10 that?

11 A Well, yes. We would suspend things that were
12 related to needing that part of the approval. So, for
13 example, if we were -- it was not clear what we were to
14 do with -- whether we were to connect to the sewer
15 system or put in septic tank -- septic systems, then, we
16 would suspend any kind of engineering, for example.

17 Q All right. Going back, before, you were asked many
18 questions about whether projects were profitable or not,
19 and there was a percentage mentioned. What level of
20 confidence did you have in the success of Pinckney
21 Point? We're not talking about generalities, but what
22 was your level of confidence in the success of Pinckney
23 Point?

24 A I had a very high level of confidence that it would
25 be a successful project.

1 Q Why?

2 A Well, it was a -- it was a one-of-a-kind piece of
3 property, and I felt that, from a marketability point of
4 view, it was going to be very marketable for that
5 reason. The lots had high value, and we had a, you
6 know, just, the numbers worked very well.

7 Q At one point, you were asked about hypothesizing --
8 well, let me back up. When this complaint was first
9 filed, had the County closed on the property?

10 A No.

11 Q All right. Was your deposition February 2014, to
12 the best of your knowledge, before or after the
13 complaint was amended to bring the damages claims?

14 A I don't recall.

15 Q All right. Is there a difference between force
16 main and gravity sewer?

17 A Yes. You -- would you like for me to explain that?

18 Q Well, there's a prohibition on gravity sewer in one
19 of the agreements. Does that prohibit force main?

20 A I think, you know, I think it was a, technically, a
21 prohibition on force main, which prohibited gravity
22 sewer.

23 Q All right. Now, I'm almost done, almost.

24 My apologies for the delay. This is the last thing
25 I'm going to ask about. All right.

1 You were asked questions in your depositions about
2 not obtaining funding, and that was your first
3 deposition. Do you have your first deposition there in
4 front of you, the one from -- I think that was from
5 2014. Maybe it was in February of 2014?

6 A Yes.

7 Q And you were asked some questions on Page 50. If
8 you could go there.

9 A Okay. I'm there.

10 Q And Mr. Achurch asked you, he read the question:

11 *Okay. All right. And it would be fair*
12 *to say you all did not buy it back from them*
13 *at that point, just because you did not have*
14 *the money?*

15 And your answer was, *that's correct.*

16 Correct?

17 A That's -- that's my answer.

18 Q All right. And I just want to publish the next
19 nine lines that go with it.

20 *Okay. At some point, did you get enough*
21 *money to purchase the property?*

22 What was your answer?

23 A We were getting very close to getting enough
24 money to purchase the property.

25 Q And who was that money going to come from?

1 MR. ACHURCH: Your Honor, that's not inconsistent
2 with the testimony he gave.

3 THE COURT: He can put it in context. Go ahead.

4 BY MR. WALKER:

5 Q And who is that money going to come from?

6 A John Kunkel was working on sources.

7 Q All right.

8 MR. WALKER: Your Honor, I think that's it. I just
9 want to check with my co-counsel.

10 THE COURT: Okay.

11 MR. WALKER: Thank you.

12 THE COURT: Thank you. Mr. Achurch.

13 MR. ACHURCH: I just have one question.

14 TAYLOR BUSH

15 RE-CROSS-EXAMINATION BY MR. ACHURCH:

16 Q This was a dynamite project and a one-of-a-kind
17 project, right? Beautiful, low numbers, right? Low-
18 cost, lots of money you were going to make on it?

19 A That's a --

20 Q But, but, you couldn't get an investor.

21 COURT REPORTER: I'm sorry, I didn't hear your
22 answer.

23 A I said, that's a. And I haven't answered yet.

24 Q But you couldn't get an investor, right?

25 A We -- I think we could have gotten an investor,

1 yes.

2 Q But you didn't.

3 A We didn't have our approvals.

4 ITEM IDENTIFIED AS ORIGINAL 2-11-14

5 DEPOSITION OF TAYLOR BUSH

6 MARKED COURT'S EXHIBIT NUMBER 1.

7 ITEM IDENTIFIED AS ORIGINAL 5-28-15

8 DEPOSITION OF TAYLOR BUSH

9 MARKED COURT'S EXHIBIT NUMBER 2.

10 BY THE COURT:

11 THE COURT: Anything further? All right, Mr. Bush.
12 You may step down, sir.

13 A Thank you.

14 THE COURT: Ladies and gentlemen, that is it for
15 the evening. I have to remind you, do not discuss this
16 case. Do not do any independent research.

17 Ladies and gentlemen, I know it's hard sitting
18 there. I certainly appreciate the difficult job you do,
19 and I understand jury service is just that, service. I
20 want you all to know how important this case is.

21 Certainly, we all try to get a little bit light-hearted
22 at the end of the day. We know you're tired, and we
23 appreciate that, and I appreciate the lawyers doing
24 that. But again, realize that their job is to get the
25 evidence before you, and they're doing just that.

1 So, I want to thank you all for your patience, and
2 for being here. 9:30 tomorrow, Mr. Foreperson. Is that
3 acceptable? Very good. We'll continue the trial of the
4 case. Leave your notebooks in your seats, please. Good
5 night, you all.

6 JURORS LEAVE COURTROOM 5:36 P.M.

7 BAILIFF: Jury is clear, your Honor.

8 THE COURT: Thank you, Rick. All right. Anything
9 we need to take up, you all?

10 MS. MONOC: Can we have just one second?

11 THE COURT: Okay. Anything?

12 MR. ACHURCH: I don't have anything, your Honor.

13 THE COURT: No? Okay.

14 MS. MONOC: I'm sorry.

15 MR. WALKER: We have nothing more, your Honor.
16 Thank you.

17 THE COURT: Okay. You all, we'll start at 9:30
18 tomorrow morning, so be here about 9:15 or so. If
19 there's anything you need to take up, let us know
20 overnight. Also, Leigh Ellen -- if you all have started
21 working on jury charges for this breach of contract
22 portion, obviously, I would love for you to send them
23 over to Leigh Ellen tonight. I don't have the benefit
24 of having her on Thursday and Friday, so if we could
25 start looking at it, I'd really appreciate it, if anyone

1 has started working on it. Okay?

2 MS. MONOC: Sure thing.

3 MS. LOHR: I can probably throw a couple together,
4 but I don't think it would be comprehensive.

5 THE COURT: I don't need anything general. I just
6 need anything specific that you're looking for. Is
7 there any specific case law, you know, case law or
8 language. Please don't misquote it. Don't paraphrase
9 it. Give it to me as it's stated. Okay? Because if
10 not, I'm not going to put it in. So, just to tell you
11 all. And again, if there's any specific, you know,
12 ideas that you all have, again, let me know ahead of
13 time.

14 MS. MONOC: What I did with each case, is I, then,
15 quoted it. Like, I wrote a charge, and then, put the
16 exact quote by the case.

17 THE COURT: Wonderful.

18 MS. MONOC: Is that okay?

19 THE COURT: Couldn't be better than that, so I know
20 what we're doing. Yes.

21 MR. WALKER: I think one of the jurors said that he
22 or she had a doctor's appointment tomorrow, and we're
23 going to take lunch then.

24 THE COURT: Yes, it's at 1:00 o'clock.

25 MR. WALKER: And I can't remember whether it's

1 12:00, 1:00, or --

2 THE COURT: It's at 1:00 o'clock, and she is at
3 Beaufort Memorial, and it's her mother is ill, and
4 they're doing kind of a course-of-treatment appointment.
5 She has cancer. And so, her father will be there, as
6 well, but she wanted to be there.

7 MR. WALKER: Okay.

8 THE COURT: Because she's going to assist in her
9 care. They told her it would only take roughly an hour.
10 So, we'll probably break at about quarter 'til. And she
11 said the father was bringing the mother, so she doesn't
12 have to go get her or anything like that. So, we're
13 going to break for roughly an hour and fifteen minutes,
14 an hour and twenty minutes tomorrow.

15 MR. WALKER: That's fine.

16 THE COURT: Okay?

17 MR. WALKER: Thank you.

18 THE COURT: One o'clock. Thanks. Okay.

19 END DAY TWO, TUESDAY

20 APRIL 26, 2016 5:39 P.M.

21 ~~BEGIN DAY THREE, WEDNESDAY~~

22 APRIL 27, 2016, 9:43 A.M.

23 BY THE COURT:

24 THE COURT: All right. Our jury is all here. Are
25 we ready to go this morning?

1 MR. WALKER: Plaintiff's ready to go.

2 THE COURT: You ready to go, Mr. Achurch?

3 MR. ACHURCH: Yes, your Honor.

4 THE COURT: All right. Well, Rick, if you're ready
5 to go.

6 BAILIFF: I'm ready to go.

7 THE COURT: You ready to go? Good morning, Megan.

8 MR. BENDLE: Judge, before the jury comes out, --

9 THE COURT: Yes.

10 MR. BENDLE: I just have one objection that I'd
11 like to make in anticipation of the testimony that --

12 THE COURT: Okay. Who's going to be testifying
13 first this morning?

14 MR. WALKER: We're going to do Garrett Budds.

15 THE COURT: Okay.

16 MR. WALKER: And then, John, Kunkel. And then,
17 Tommy Hartnett.

18 THE COURT: Okay. Good morning. All right.
19 What's your objection, Mr. Bendle?

20 MR. BENDLE: The objection is, I'm just
21 anticipating the testimony that he'll try to elicit,
22 back in 2004, which was a time period that the County
23 was using, not the current consultant, which is the Open
24 Land Trust, but at the time it was TPL. And back in
25 2003, there was some contact that was made by the

1 landowner, who was Pinckney Point Farms, with that
2 consultant at the time, with respect to any interest the
3 County may have in acquiring the property. And I would
4 just ask that, that testimony be prohibited on the basis
5 of relevancy, because it obviously predates the contract
6 that we're being sued under. And again, I don't believe
7 the witness is going to have any knowledge of that
8 contact, number one; and also --

9 THE COURT: Which witness is this? Which one?

10 MR. BENDLE: I'm sorry, Garrett Budds.

11 THE COURT: Okay.

12 MR. BENDLE: Who was formerly with Open Land Trust
13 for Beaufort County.

14 THE COURT: Okay. Did I hear you correctly that --
15 will you hold them off for just one second. I
16 apologize, just give me one minute.

17 So, am I hearing you correctly, you said that, back
18 in 2004, when you were using a different consultant,
19 that consultant spoke with Beaufort County about
20 purchasing this property? Is that what you're saying?

21 MR. BENDLE: The landowner at the time, who was
22 Pinckney Point Farms, had contacted the County's
23 consultant at the time, which was a trust for public
24 land.

25 THE COURT: They contact the County's consultant.

1 MR. BENDLE: Yes, ma'am.

2 THE COURT: Okay.

3 MR. BENDLE: Yes, ma'am. And there were some
4 negotiations back in 2004. It never quite made it to
5 Rural & Critical for a vote.

6 THE COURT: Okay.

7 MR. ACHURCH: But there was some contact and some
8 interest in acquiring the property at that point in
9 time.

10 THE COURT: How long has Open Land Trust been in
11 existence?

12 MR. WALKER: Which Open Land Trust?

13 THE COURT: Okay. This is obviously of a new
14 generation, but when did it start? When did it --

15 MR. GRUBER: Beaufort County Open Land Trust?

16 THE COURT: Yes. Have they had it for forever?

17 MR. GRUBER: 1971.

18 THE COURT: Okay. Thank you. All right. Well, I
19 know why you want to ask.

20 MR. WALKER: No. What he says is correct, that the
21 County did show some interest in it through its then
22 agent, but we're not going to go into those dealings
23 with this witness, because that was before him, so.

24 THE COURT: Okay.

25 MR. WALKER: Even though the deposition ranged into

1 that, --

2 THE COURT: Okay.

3 MR. WALKER: -- we're not going to go into it
4 today.

5 THE COURT: Very good.

6 MR. WALKER: We're going to keep with his
7 involvement.

8 THE COURT: Okay. Perfect. Thank you.

9 MR. WALKER: All right. Thank you.

10 THE COURT: Appreciate it.

11 MR. BENDLE: Thank you, Judge.

12 THE COURT: Let's make it easy. Let's go. Let's
13 bring them in, Rick. I'm sorry for leaving them in the
14 hall.

15 BAILIFF: Jury is entering the courtroom, your
16 Honor.

17 THE COURT: Thank you. Good morning.

18 UNIDENTIFIED JUROR: Good morning.

19 JURORS ENTER COURTROOM 9:46 A.M.

20 THE COURT: Good morning.

21 RESPONSES FROM JURORS.

22 THE COURT: Pleasure to see you all. At this time,
23 we're going to continue with the trial of this case.
24 Mr. Walker, if you would call your first witness for
25 this morning.

1 MR. WALKER: Thank you, your Honor. Garrett Budds.

2 THE COURT: Come on forward, Mr. Budds.

3 MADAM CLERK: Do you solemnly swear or affirm that
4 the testimony you give to the Court in this case shall
5 be the truth, so help you God?

6 GARRETT BUDDS: I do.

7 MADAM CLERK: You may be seated.

8 GARRETT BUDDS: Thanks.

9 GARRETT BUDDS

10 DIRECT EXAMINATION BY MR. WALKER:

11 Q Mr. Budds, where do you live?

12 A Charleston, South Carolina.

13 Q And where are you now employed?

14 A Lowcountry Land Trust.

15 Q And where did you grow up?

16 A More or less, the Lowcountry of South Carolina.

17 Q Okay. Did you go to college?

18 A I did.

19 Q Did you go to school after college?

20 A I did.

21 Q Did you obtain some degrees?

22 A I did.

23 Q What were those degrees in?

24 A I hold a bachelor of arts in history. I hold a
25 master of science and environmental studies and policy.

1 I hold a juris doctor, as well as a certificate in
2 environmental and natural resources from the School of
3 Law at the University of Montana.

4 Q A juris doctor gives you permission to do what?

5 A It gives me permission to practice law.

6 Q Do you do it?

7 A I do not practice law.

8 Q What's your passion?

9 A My passion is conservation.

10 Q All right. And full disclosure, I am on the board
11 of the Lowcountry Open Land Trust where you work,
12 correct?

13 A You are.

14 Q Do we occasionally work on projects together?

15 A From time to time.

16 Q Have we ever discussed this case in my work with
17 the Land Trust?

18 A No, we have not.

19 Q So, before you went to work at the Lowcountry Land
20 Trust, where did you work?

21 A Prior to being employed at Lowcountry Land Trust, I
22 worked at Beaufort Open Land Trust, similar organization
23 located here in Beaufort, South Carolina.

24 Q All right. And tell us what a land trust is.

25 A Um-hmm.

1 Q What does Beaufort County Open Land Trust do?

2 A Beaufort Open Land Trust is not unlike any land
3 trust across the country. There's approximately 2,500
4 of them in the United States. They are private, non-
5 profit, conservation organizations. Typically, they
6 work within a community or a region to help protect land
7 within that community.

8 Q And how do they help protect it? What tools do
9 they have, and how does it work if a land is being
10 considered for protection?

11 A There are a suite of tools that a land trust might
12 use to protect land. By and large, the most dominant of
13 those is the conservation easement. It's a legal tool
14 in which a voluntary agreement is entered into between a
15 landowner and the land trust to permanently protect
16 their land in some way, shape, or form. I would say
17 that 80 to 90 percent of all conservation projects that
18 land trusts work on, they utilize conservation
19 easements.

20 Alternatively, from time to time, land is purchased
21 in fee simple, i.e., the land is purchased outright,
22 either by the land trust or by somebody else. Deed
23 restrictions, timber agreements, there are some other
24 tools in the toolbox. By and large, conservation
25 easements and land being purchased.

1 Q Now, when did you start? And you may have said
2 this.

3 A Sure.

4 Q When did you start with the Beaufort County Land
5 Trust, approximately?

6 A 2010, I believe.

7 Q Okay.

8 A Yeah.

9 Q And what was your position with them?

10 A I was the director of conservation.

11 Q And were there others working there when you
12 started with the Beaufort Land Trust?

13 A Yes.

14 Q When you talk about director of conservation, what
15 would have been your responsibilities? What did you do
16 on behalf of the land trust?

17 A More or less, I oversaw the entire conservation
18 program for the trust, so any project work that I just
19 described, working with landowners going forward,
20 engaging with agencies, local governments, public
21 education, letting folks know about the work we did in
22 the community, and public outreach.

23 Q Did you deal with private owners of land who might
24 be interested in protecting that land, putting
25 restrictions on it that would reduce its capacity for

1 development?

2 A That's -- yeah, that's the bread and butter of what
3 we did.

4 Q All right. Is that where the conservation easement
5 comes in?

6 A It is..

7 Q All right. Are there tax advantages to that, that
8 sometimes give incentive to a private landowner?

9 A There are.

10 Q Would you tell us about those.

11 A With the disclaimer that I'm not a tax attorney,
12 and I'm not giving you tax advice, sure.

13 Q Okay.

14 A The IRS code is structured so that, if you enter
15 into a perpetual conservation agreement and easement on
16 your property, you're entitled to certain deductions and
17 credits. At the federal level, you're entitled to a
18 suite of deductions that you can take, because you've
19 devalued your land, to some degree. And at the state
20 level, you're entitled to a credit, based on the same
21 theory.

22 Q So, that's the private owner land world. Now, I
23 want to come over to the Beaufort County Rural and
24 Critical Lands Program.

25 A Correct.

1 Q Are you familiar with that?

2 A I am.

3 Q Will you tell the jury what the Beaufort County
4 Rural and Critical Lands Program generally was set up to
5 do?

6 A Generally, the -- well, the program was established
7 in the late '90's, I believe, and it was established to
8 protect rural, i.e., the rural landscape of Beaufort
9 County, or critical, parcels that were deemed critical
10 for protection because of a particular natural resource
11 value, or they were -- they posed a particular advantage
12 to the County to have protected. They were in critical
13 areas for protection because of growth pressure. The
14 program was established to do that.

15 It was funded through a voter referendum, so it's
16 on the ballot. It's been on the ballot four times now,
17 I believe, to refund it. And those monies are used to
18 enter either into conservation easements, or to purchase
19 land from landowners, to protect land in accordance with
20 the mission of the program.

21 Q And does the County itself, meaning, is there
22 anybody on staff, who evaluates property to make
23 recommendations about whether certain land should be
24 preserved, or is that outsourced?

25 A On staff at the County or at the Land Trust?

1 Q Yes, on staff at the County.

2 A No, that -- the management of the program, if you
3 want to call it that, is outsourced.

4 Q All right.

5 A So, the County hires a consultant, if you will, or
6 a group to manage the program on behalf of the County.

7 Q When you came to work for the Beaufort County Open
8 Land Trust around 2010, who was the outside consultant
9 who was doing that for the County?

10 A At the time that I came on board at the Land Trust,
11 the program was actually up for bid. They had an RFP
12 out to hire a new consultant at the time. There were
13 two gentlemen that had formed a private company. I
14 believe they were land use attorneys or real estate
15 attorneys. They had formerly been employed with the
16 Trust for Public Land, which is another national non-
17 profit conservation organization, which had held the
18 contract with the County for a number of years. Sort of
19 growing out of that relationship, they had managed the
20 County for a handful of years -- or the program, excuse
21 me, for a handful of years.

22 Q And did, at some point, Beaufort County Open Land
23 Trust, your group, take over that responsibility?

24 A They did.

25 Q Was that under a written agreement with the County?

1 A Correct.

2 Q Okay.

3 A It was under a contract.

4 Q And how did that land selection process work within
5 your organization? Within the Beaufort County Open Land
6 Trust, how would you go about, if you did, evaluating
7 properties, and looking at them as possible candidates
8 for this program?

9 A Well, the advantage of having a conservation
10 organization manage the property is that, at our core,
11 we study the landscape, so we have a fairly strong
12 handle on what properties across the landscape are of
13 high value. So, we have that, more or less, baked into
14 our day-to-day business model on what is important land
15 within the County for protection. Within the context of
16 the program, we couch that knowledge and our priorities
17 as a conservation organization within a set of tools,
18 the foremost tool being the Beaufort County Greenprint,
19 which was a mapping -- a mapping tool, a diagram that
20 was developed using input from individuals,
21 organizations, agencies, natural resource data, to
22 basically built a map or a model of what land within the
23 County is the most important land for protection. So,
24 it's a guide, if you will, for where you should focus
25 your effort, because you can't go protect everything in

1 every nook and cranny of the County. Greenprint guided
2 us, foremost.

3 Q And once you had identified the land, and if it
4 looked like it was a potential candidate, would you go
5 about evaluating it, pursuant to some type of criteria?
6 What would you do?

7 A We would do an internal evaluation. We would look
8 at where the land happened to fall within the
9 Greenprint, the characteristics of a particular
10 property. There is a whole set of natural resource
11 values that a property may have, so we'll see which are
12 strong and which are weaker, how strong a candidate we
13 think the property might be internally. We would then,
14 also, weigh that property's values against a set of
15 criteria that the program had set up. So, basically,
16 it's a list of values, and we can rank them against that
17 list, as well.

18 Q When you say we, who was the we when you were at
19 the Land Trust here in Beaufort?

20 A Well, there was a few we's. I was always one of
21 the we. And there was -- when I came on board, there
22 was Dr. Ann Bluntzer was the executive director of the
23 Land Trust. Dr. Bluntzer and I would analyze the
24 properties. We would also, a majority of the time, get
25 input from the natural resource planner at the County,

1 Amanda Flake. I believe she still holds that position.
2 She would rank a property, as well. Not every time, but
3 often. So, there was not just myself ranking it as an
4 individual, but there was usually two or three folks
5 taking a look at the piece of property.

6 Q We've talked about ranking and scoring the property
7 in terms of its resource value. Would you actually go
8 out and look at the property, get your boots on the
9 ground, kind of thing?

10 A Sure. That's a component of what I described
11 initially as our sort of internal analysis. Land trusts
12 are frankly built off of relationships. We work
13 intimately with landowners. And the first step is,
14 typically, meeting with a landowner on a piece of
15 property, taking a look at it, getting a sense of how
16 the property -- sort of the lay of the land, how it
17 feels, how it functions, the history of the property,
18 and then, the anticipated uses of the property going
19 forward. We typically have lengthy conversations with
20 landowners about what their expectations are into the
21 future, making sure it's a right fit with conservation,
22 and that their goals are aligned with the goals of the
23 organization.

24 Q And if it worked out that the property is one that
25 qualifies, in your estimation, and you have the willing

1 private landowner, what are the steps of the process to
2 take it through, to get it approved?

3 A Within the program?

4 Q Yes.

5 A Within the Rural and Critical program? If there's
6 a meeting of the minds, so to speak, between the
7 landowner and the land trust on what the potential
8 project might look like, and we go through that ranking
9 process, and it scores a ranking that is deserving of it
10 becoming an approved project in going forward through
11 the program. The first step is, typically, prior to a
12 meeting of the Rural and Critical Land Board, which is
13 the board set up by the County to manage the program on
14 the, I guess, the County side of things, prior to going
15 to the board meeting for the first time, we would share
16 our rankings with the administrative arm of the Beaufort
17 County government. Josh Gruber, the County Attorney,
18 was the liaison from the County administrative side.
19 And then, with -- often, we would share it with the
20 Planning Department, as well, letting them know what's
21 coming on board; because again, natural resource
22 planner, Amanda Flake, was the point of contact for the
23 program.

24 We'd have brief discussions with them, sort of let
25 them know what's on our plate, what we intend to bring

1 to the Rural and Critical Land Board. And then, they
2 would have monthly meetings. We would bring the
3 projects to the board. Typically, there's a first
4 vetting, where they would take a sort of a general look
5 at the project. Sometimes, they would approve them
6 immediately. And then, sometimes, they would -- we
7 would come back for a second presentation at the next
8 meeting.

9 Q If it was approved by that Rural and Critical Lands
10 Board, --

11 A Um-hmm.

12 Q -- where would it go from there?

13 A Well, any projects approved by the Rural and
14 Critical Land Board would be sent to the Natural
15 Resources Committee of County Council.

16 Q Would they then make a recommendation?

17 A Correct. They would make a recommendation out of
18 committee to a full council for a vote.

19 Q And the next step. What after that?

20 A County Council would hear the project, and decide
21 whether or not they wanted to allocate funds to fulfill
22 the project as it was designed, whether that's
23 conservation easement, buying the property outright,
24 what have you.

25 Q Would County Council actually approve the amount of

1 money that was going to be expended for that
2 conservation property?

3 A Correct. The projects, as they were presented to
4 the Board, more or less had the content that you would
5 expect any land acquisition project to have. So, acres,
6 how much you're paying for the piece of property, et
7 cetera, that would then be passed up through those
8 various meetings and approvals. So, when it came to the
9 committee, when it came to County Council, it would have
10 both the value and the deal structure assigned to it.
11 So, they would approve, more or less, expending monies
12 out of the Rural and Critical Land Program to pay for
13 the project.

14 Q Very good.

15 A Good.

16 Q And now that we have the background on how the
17 process works, I want to talk to you about this piece of
18 property that we've been here on all week, Pinckney
19 Point. Are you familiar with Pinckney Point?

20 A I am.

21 Q When did you first become involved in any way in
22 your capacity with the Beaufort County Open Land Trust
23 with Pinckney Point?

24 A Um-hmm. With the property --

25 Q This property.

1 A -- proper, I believe it was November of 2012.

2 Q And how did that come about?

3 A I was contacted by a broker in Bluffton, South
4 Carolina.

5 Q Who was that?

6 A It was Bill Herbkersman.

7 Q All right.

8 A Who owns a realty and brokerage company in
9 Bluffton. And Mr. Herbkersman contacted me, said he had
10 -- knew some folks that might be interested in selling a
11 piece of property to the program, or wanted to explore
12 that as an option, and I said I'd be more than happy to.
13 That's what I do, day in and day out, is meet with
14 landowners on their property, and talk about the
15 program, and what we might be able to do.

16 Q Did you follow through with that, with him?

17 A I did. He set up a meeting with the owners of the
18 property, and we did a site visit, as I described
19 earlier. We met on the property, Pinckney Point. I met
20 with the owner, and we took a walk around, talked about
21 the property, much as I've already described.

22 Q Who was the owner's representative that you met
23 with on the property?

24 A The owner representative I met with on the property
25 was Lee Wooddall.

1 Q All right. Did he explain who the owner then was?

2 Did you all get into that at all?

3 A Not in a -- not in a high level of detail.

4 Q All right.

5 A That's typically not subject matter for the initial
6 conversation. Typically take them at their word that
7 they own the property. But no, he just said that, you
8 know, I'm one of the owners of the property.

9 Q So, Mr. Wooddall was there.

10 A Correct.

11 Q You were there.

12 A Correct.

13 Q Was anybody else present for the site visit?

14 A Bill Herbkersman accompanied us on that initial
15 site visit to make the introduction, so it wasn't two
16 strangers meeting in the woods.

17 Q Right.

18 A Then, I believe there was someone else there, I
19 honestly think it was Lee's son, but was just along for
20 the ride, taking a walk, looking for birds. But he
21 wasn't part of the conversation. Sort of detached from
22 the conversation.

23 Q Got it.

24 A Yeah.

25 Q And when did this first visit to the property

1 happen where you looked around?

2 A It was fairly contemporaneously with the call. So,
3 I believe it was November, some point in November of
4 2012, or Autumn. It was cool out.

5 Q And how much time did you spend on the property
6 that day?

7 A An hour or an hour and a half would be a good
8 guess.

9 Q Okay. Did you like what you saw?

10 A Absolutely. Yeah. It's a fantastic property. I
11 think that's been stated, already. It's replete with
12 natural resource value. It's in a extraordinarily
13 important natural resource corridor within the County,
14 and important watershed. And so, I knew it and its
15 context within that watershed, within the Okatie River,
16 and I certainly knew how important the property was in
17 that natural context.

18 Q Did you have any further visits to the site, where
19 you went out and walked around before you started moving
20 through the process?

21 A I may have visited the property one other time,
22 once or twice, perhaps, independently. Take a few
23 photographs, walk around and look at something. There
24 were not extended or prolonged periods of time.

25 Q And when you got back to the office after you had

1 this visit in November of 2012, did you go over your
2 visit with anybody else at the Land Trust?

3 A I'm sure I did. I don't recall a specific
4 conversation, but you know, typically, within the
5 office, we'd chat about, you know, projects that we're
6 working on. So, at that time, it would have been Patty
7 Kennedy was the executive director of the Land Trust.
8 Probably had a conversation with Patty about it.

9 Q Now, around this time, did you take some personal
10 leave from the Land Trust?

11 A I did.

12 Q And what was that for?

13 A I had a hip replacement surgery November 14th.

14 Q Okay. Was the visit before that hip replacement
15 surgery?

16 A Yes, it was. I was not limping.

17 Q And when did you get back full time after your hip
18 replacement surgery?

19 A I don't recall an exact date, but it was after the
20 first of the year.

21 Q Okay. Did you pick things up with the Pinckney
22 Point tract when you got back?

23 A More or less, yes.

24 Q Did you have communications with the owner?

25 A I did.

1 Q And who would have been the person that you were
2 dealing with?

3 A More or less, Lee was consistently who I had
4 contact with. From time to time, there would be other
5 members -- apparently, other owners of the membership
6 group that were copied. I recall John Irby being on
7 some emails. Sometimes, Bill Herbkersman would be
8 copied in. He's not an owner, but he would be copied.
9 But primarily, Lee.

10 Q All right. And did you go over possibilities,
11 basically talk about what might could happen?

12 A Yes. So, once a landowner has expressed interest
13 in entering into a conservation project with the Land
14 Trust, they're not unlike other real estate
15 negotiations. You're deciding, you know, what's
16 acceptable value for them to sell whatever interest
17 they're selling, and what's a reasonable value for the
18 party that's purchasing that interest to pay. So, if
19 you're selling your house, we would negotiate on what we
20 were buying it for. We had several conversations around
21 that, different deal structures and what those might
22 look like, and what values might be paid.

23 Q So, you were talking numbers.

24 A We were talking numbers.

25 Q Did you talk about different ways that it might be

1 structured?

2 A We did.

3 Q And what were the ways that it might be structured
4 that you talked about with Lee Wooddall?

5 A We discussed three different options. One was an
6 outright purchase of the property, where we bought
7 everything, every last acre, and we owned every right.
8 So, a complete purchase, a fee purchase of the property.
9 We discussed purchasing the property in fee, subject to
10 a lease-back. So, we would buy the property, but grant
11 the owners a lease back, a hunting lease. They had some
12 interest in hunting birds on the property, so there was
13 the idea that, perhaps, we would buy the property, but
14 provide them a lease for a specific term of years that
15 would then expire. And at that point, the entirety
16 would be owned again. We also discussed just purchasing
17 a conservation easement on the property. So, they would
18 retain private ownership, but there would be an easement
19 owned on the property, which severely limited what could
20 be done on the property. Those were the three different
21 structures, and each had a respective price point.

22 Q Did you explore those options internally with other
23 personnel at Beaufort County Land Trust, evaluate the
24 different options, pros and cons?

25 A I'm sure -- I mean, I'm sure Patty and I discussed

1 it.

2 Q In the end, did you come down with a
3 recommendation? Or was there --

4 A I actually believe that we put all three deal
5 structures to the Land Board for consideration --

6 Q Okay.

7 A -- and we discussed the pros and cons of each
8 structure at the -- at the Land Board meeting.

9 Q And did you and Ms. Kennedy do a scoring of the
10 property to assist in trying to put a number to the land
11 value or the conservation value?

12 A I'm sure we did. That was our -- our practice.

13 Q Now, around this time, were you in the process of
14 switching jobs?

15 A I was, actually, yeah.

16 Q And where were you switching to, again?

17 A To my current employer, Lowcountry Land Trust.

18 Q Did you continue to be involved in this project,
19 though, even though you were switching to the Lowcountry
20 Land Trust?

21 A To a lesser degree. As I transitioned from the
22 Beaufort Open Land Trust to the Lowcountry Land Trust,
23 there was a point in time at which I had become less the
24 point of contact on the project, but continued to advise
25 or communicate with Patty on a very limited basis, Patty

1 Kennedy, the executive director, about the project, to
2 sort of transition or hand over the reigns of
3 communication at that time.

4 Q Who put together the proposal for the Rural and
5 Critical Lands Board?

6 A The Land Board proposal, I put the -- I put that
7 together.

8 Q Was it accompanied by a visual PowerPoint?

9 A It was.

10 Q Who put that together?

11 A I believe I did.

12 Q All right. Do you know whether, or can you
13 remember whether or not this particular property had
14 that first vetting with the Board, or was it just one
15 exposure to the Board, one meeting?

16 A I don't recall, to be honest, yeah.

17 Q All right. Is Plaintiffs' Exhibit -- what is
18 Plaintiffs' Exhibit 105?

19 A It appears to be a copy of the proposals that we
20 would put together for the Rural and Critical Land
21 Board.

22 Q Does this appear to be a correct copy of the
23 proposal that you prepared?

24 A I believe so.

25 Q All right.

1 MR. WALKER: We'd offer 105 --

2 BY MR. WALKER:

3 Q Was it actually presented to the Board for their
4 consideration?

5 A I believe so.

6 Q All right.

7 MR. WALKER: We'd offer 105 into evidence.

8 MR. ACHURCH: No objection.

9 THE COURT: Without objection, it's in evidence.

10 ITEM IDENTIFIED AS COPY OF PROPOSAL
11 FOR FEE SIMPLE ACQUISITION,
12 MARKED PLAINTIFFS' EXHIBIT NUMBER 105,
13 ADMITTED AS EVIDENCE.

14 BY MR. WALKER:

15 Q Mr. Budds, you've got one before you, and we also
16 have the screen up here so we can go over it.

17 A Um-hmm.

18 Q So, and if you could please just start at the top,
19 and punch the first half of it as we go through it.

20 All right. What is the date of this proposal?

21 A March 14, 2013.

22 Q All right. And when you say *Proposal for*, you have
23 something after that. What did you have after that?

24 A It says, *Fee Simple Acquisition*. So, as I
25 mentioned earlier, fee simple is when we're buying the

1 whole property.

2 Q Okay.

3 A Every stick and leaf.

4 Q And underneath, do you go through, just sort of the
5 bullets or the particulars?

6 A Yeah, the -- the first section is the -- basically
7 a background on the property, if you will.

8 Q Yeah.

9 A The fine points.

10 Q But up at the top, do you have the acreage?

11 A Acreage.

12 Q And what was the purchase price if you wanted to
13 buy it outright?

14 A Six million nine hundred and fifty thousand
15 dollars.

16 Q Okay. And then, you get down to the bottom, and is
17 that your score for it there, your ranking?

18 A Yeah, where it says *ranking*, and it says, *8.81*,
19 that would be a -- and it says, *cumulative average*, in
20 parentheses.

21 Q Right.

22 A That would be the average of multiple rankings.
23 So, if there's a cumulative average, I ranked it, and
24 likely, Patty ranked it, as well, and perhaps someone
25 else.

1 Q And the next paragraph is titled *Project*
2 *Background*, and what do you do in your bullet points
3 there? What are you trying to bring out, Mr. Budds?

4 A These are the very general points of interest
5 regarding the property, both from a natural perspective,
6 but also, from a conditional perspective, for the
7 condition of the property. Oftentimes, what the zoning
8 might be, and things of that nature.

9 Q You talk about the location and some physical
10 qualities in Bullet Points --

11 A Um-hmm.

12 Q -- 2 -- 1, 2, 3. Then, you get down to four bullet
13 point, the fourth bullet point. And what was the fourth
14 bullet point here?

15 A Following the sort of the geographic bullet points,
16 which orient the Board, the fourth bullet point states
17 that there's some approved development on the property.

18 Q Well, if you would just read the fourth bullet
19 point.

20 A Oh, read it out. Okay. Sure.

21 Q That's, if you don't mind.

22 A *The property currently has an approved master*
23 *plan for a rural subdivision, maximizing the*
24 *water's edge and maritime forest; 77 units,*
25 *77 septic tanks, dozens of docks.*

1 Q And where did you obtain that information?

2 A I don't recall specifically, but what I typically
3 would have done would have been, contacted Amanda Flake
4 in the Planning Department, and any project we put
5 forward, we would ask the Planning Department, you know,
6 what is it zoned for, entitled for? It gives the Board
7 some context for the project to understand what the
8 potential development may be on a property.

9 Q Now, below --

10 A I would also add that, when I put these proposals
11 together, I make them as accurate as possible. They're
12 not, per se, completely accurate.

13 Q Was it your intent to try to have them accurate?

14 A Absolutely. Absolutely.

15 Q To try to make them as accurate as you could, based
16 on the information you had?

17 A Absolutely.

18 Q All right.

19 A If anything, emerged at a later date, we would
20 modify the proposal.

21 Q Then, I see in the next one, it's called *Purchasing*
22 *Cost Structure*. What are you doing there, Mr. Budds?

23 A I'm outlining for the Land Board a synopsis of the
24 conversation we'd had with the owner to date, and a
25 proposed structure for purchasing some property interest

1 in the property.

2 Q Now, you have a heading under that acquisition
3 structure, and we saw the first part of that in the
4 upper part. But down below, you have something called,
5 *Other Contemplated Cost Structures*. What's that about?

6 A So, as I mentioned before, we had talked about
7 three options with the landowner. There's an
8 acquisition structure that's outlined there, and that's
9 that fee purchase. And there's two other options, as
10 I'd outlined before, purchase of an easement, or
11 purchase with a lease back.

12 Q Do you give the relative amounts -- the respective
13 amounts for each of those?

14 A I do.

15 Q If there only going to be a conservation easement
16 with the County not owning it, how much money was it
17 going to cost?

18 A Five million eight hundred and seventy-five
19 thousand dollars.

20 Q If it was going to be a fee purchase with a thirty-
21 year lease back, what was that going to cost?

22 A 6.5 million dollars.

23 Q And how much was it going to cost to get
24 everything, no lease, total control, fee simple
25 ownership?

1 A At the time of this proposal, I had six million
2 nine hundred fifty thousand dollars, so. But from time
3 to time, you continue to negotiate, and prices change.
4 That was the number that we had at the time.

5 Q And where would that six million nine hundred fifty
6 thousand dollars come from?

7 A It would come from where, on this proposal, you
8 see, *RNC funds required*. So, RNC stands for Rural and
9 Critical funds.

10 Q Right.

11 A That's the funding that I had described earlier,
12 that the program is provided via voter referendum. So,
13 there is a pot of money, or a bank, if you will, that we
14 can use to purchase properties. And on this sheet, I
15 note that it's a -- there's -- it's not a leverage
16 purchase, so we aren't pulling monies from any other
17 places, other grants, other programs. It would be a
18 straight purchase through the Rural and Critical Land
19 program fund.

20 Q Very good. And if we could go to Page 2. Up at
21 the top, there's a header that you put in there, *RNC*
22 *Program Attributes*. And what are you attempting to do
23 in the bullet points under that?

24 A My goal in this section was always to relate to the
25 Board how this property, whatever purchase structure

1 we're contemplating, might align with the goals or the
2 priorities of the program, what the program's hoping to
3 do. As I described before, protect important natural
4 resource values, waterways, things of that nature.

5 Q Well, let's go down to the fourth bullet point. Do
6 you talk about potential development?

7 A I do.

8 Q And what do you say?

9 A Acquisition would protect property from pending
10 development.

11 Q Then, the fifth bullet point, you also talk about
12 that.

13 A I do. *County has approved master plans for*
14 *development of this property.*

15 Q And then, the next bullet point, you talk about
16 storm water?

17 A In the next bullet?

18 Q Yeah. Protection -- I'm sorry, it would be Bullet
19 Point Number 6, *Protection with Limits.*

20 A Um-hmm.

21 Q What's that? What are you addressing there?

22 A I'm addressing storm water impacts into the river
23 system.

24 Q Did you have any understanding of what type of
25 storm water treatment had been proposed under the

1 development plan for this property?

2 A Only what had been related to me, and I stated on
3 the previous page about septic tanks.

4 Q All right.

5 A But that's also, frankly, couched in what we
6 understand and knew to be true about storm water in the
7 county at the time. As I mentioned in the second bullet
8 point, it's an -- the Okatie River was a former
9 outstanding resource water, as many rivers were in
10 southern Beaufort County. The degradation of water
11 quality in that river and others is directly tied to
12 upland development. So, storm water treatment, if you
13 will, regardless of what you employ, helps that to some
14 degree. But by and large, development of the upland,
15 i.e., converting it to commercial or residential
16 development, had a demonstrable impact on water health,
17 as well. So, it was always a concern, regardless of
18 your treatment style, we knew there was going to be
19 residual impacts to river systems.

20 Q Do good vegetative buffers, sizeable vegetative
21 buffers, also help in protecting for storm water runoff?

22 A They can. They can -- they can add to a layer of
23 protection, but it's fairly well-demonstrated that, when
24 you exceed a certain amount of impervious surface on a
25 property of development, you are going to have some

1 impact on the waterway.

2 Q Now, let's go down to the last bullet point. Did
3 you talk about the historic homestead, the Pinckney
4 family house that Taylor Bush was talking about?

5 A I did.

6 Q And what was your point there?

7 A I said:

8 *Historic homestead could serve as a*
9 *Beaufort County park headquarters, retreat,*
10 *or meeting space.*

11 So, that's a possibility for the property. What we
12 didn't -- the program attributes section, as well as
13 further sections, which I'm sure we'll discuss, is
14 describing a set of potential uses that the property
15 might serve. That idea had been knocked around for
16 years, that the program might need a home, eventually.
17 Beaufort County had purchased, I think, at that point in
18 time, around ten or eleven thousand acres in fee. They
19 owned ten or eleven thousand acres. None of that had
20 really been opened up to the public. They just owned it
21 outright, so a conversation was ongoing that, maybe one
22 day, you could house the program on one of the
23 properties that the County built. It really is a list a
24 possibilities, and that's one of the possibilities.

25 Q I'd like to go to the last page of this, the last

1 paragraph, where you do your wrap-up.

2 A Um-hmm.

3 Q Do you do a conclusory paragraph here, summing up
4 your thoughts about it?

5 A Sure. I did.

6 Q And what was your final paragraph?

7 A Would you like me to read it?

8 Q Please.

9 A I say:

10 *Pinckney Point would be the 'crown*
11 *jewel' of the Okatie-Colleton, connecting*
12 *all protected properties to date,*
13 *preserving one of the most*
14 *geographically unique landscapes, and*
15 *offering a central location from which to*
16 *operate a regional conservation park*
17 *complex, a true eco-tourism attraction.*

18 Q All right. Did the Rural and Critical Lands Board
19 act on this project in this meeting on March 14, 2013?

20 A It's my recollection that they did.

21 Q And what was the -- what was the result?

22 A My recollection is that they voted unanimously to
23 approve acquisition of Pinckney Point, thereby sending
24 it forward to Natural Resource Council Committee for
25 review.

1 Q And I do want to also go into the PowerPoint that
2 you presented.

3 A Sure.

4 Q You mentioned a PowerPoint, which is Plaintiffs'
5 Exhibit 36. Did you have some visuals that accompanied
6 that outlying proposal?

7 A I did.

8 Q Is Plaintiffs' Exhibit 36 a copy of the PowerPoint
9 that you did?

10 A It looks to be, yes.

11 MR. WALKER: At this time, we would move into
12 evidence Plaintiffs' Exhibit 36.

13 THE COURT: Any objections?

14 MR. ACHURCH: No objection.

15 ITEM IDENTIFIED AS VISUALS POWERPOINT
16 MARKED PLAINTIFFS' EXHIBIT NUMBER 36,
17 ADMITTED AS EVIDENCE.

18 BY MR. WALKER:

19 Q If we could go to that, please.

20 Is this the cover sheet of it, your PowerPoint?

21 A It is.

22 Q If we could go to the next page. And then, the
23 next page.

24 All right. Is that a picture of the property?

25 A It's actually a photo of the Okatie River corridor.

1 I believe that's taken from the bridge on Highway 278.

2 Q Okay.

3 A Actually, looking north, for lack of a better term,
4 up the Okatie River corridor. There had been a number
5 of properties that the County had protected in that
6 corridor, so it's more of a descriptive photograph than
7 one of the actual property.

8 Q Very good.

9 The next page, please.

10 Okay. And what is this, Mr. Budds?

11 A So, as I had described earlier, the Okatie River
12 was an area of interest for both the Beaufort Open Land
13 Trust, as well as the Rural and Critical Land Program,
14 because it had high conservation value. It was also an
15 area where we were interested in trying to protect and
16 maintain water quality to the highest degree possible.

17 There had also been investment, both on the private
18 side, landowner side, as well as through the Land Trust
19 and the County program, in protecting properties within
20 that corridor. And so, it makes sense, in the world I
21 work in, when you have a -- an area that you've been
22 expending resources and focusing on over time, to dub it
23 an area of focus. And so, we, more or less, informally
24 named it the Okatie River Conservation Corridor. We did
25 that in-house at the Land Trust, but.

1 Q And what is the second quality, the last sort of
2 phrase there on that? What are you pointing out there?

3 A Oh, yeah. Building a recreational committee --
4 amenity. In addition to protecting water quality, and
5 that's that natural resource that we're focusing on
6 restoring, and you do that through upland land
7 protection, more or less, our long-term goal is to
8 hopefully restore the -- the oyster bed, so you could do
9 shell fishing in there again. They've been closed for
10 about fifteen years. It has been impaired on the DHEC
11 list for a long time. Our hope, then, was to also make
12 the river more accessible and available, as a
13 recreational amenity for kayakers, canoeers,
14 paddleboarders, things of that nature.

15 What was wonderful about an area where you're
16 investing money and protecting land is that you're
17 providing that scenic view shed when you're on the
18 water. So, it would be a nice recreational amenity for
19 you to be able to paddle the Okatie River, and have all
20 these protected lands on either side of it, so you're
21 having a true, natural experience, as opposed to
22 paddling by people's back yards.

23 Q Would those kayakers and others who are paddling --

24 A Um-hmm.

25 Q -- have a facility under that scenario at Pinckney

1 Point?

2 A That -- that was never contemplated. At the -- at
3 the bottom of this map, where you see the large -- I'm
4 sorry, the colors don't show up very well. But at the
5 bottom of the map, where there's the large, green block,
6 those are three distinct -- three separate properties
7 that, at that time, the County had already purchased,
8 and they own them in fee. And so, and then, moving
9 north up that river corridor, there's other properties
10 that the County either owned or held easements on. And
11 I know, for a period of time, there was actually a
12 discussion of a facility down on one of those southern
13 properties, a put-in, if you will, for people to paddle.
14 But again, it was an idea that was best-described in its
15 infancy. No steps had ever been taken towards
16 formalizing a facility or structures or access points,
17 just ideas.

18 Q Could we have the next slide, please, the
19 presentation.

20 A Yeah.

21 Q Are you, again, hitting on several of the
22 attributes here?

23 A I am. Again, it's a -- it's a -- I'll take them
24 out of order. It's a sensitive property for the reasons
25 I described. It's a controversial property, in that it

1 had been slated for development. And there was a long-
2 time interest in the community around Bluffton, and
3 particularly that Pinckney Colony Road area, of folks
4 and residents that wanted to see it protected and not
5 developed.

6 It straddled two river systems, the Okatie and the
7 Colleton, which is extraordinarily unique, from a
8 geologic and geographic perspective to actually have a
9 piece of property with two different substantial systems
10 on either side. It would reduce the development on the
11 river, expands that corridor I just described earlier.
12 It would add more protection to the area that we had
13 already protected a good bit of land in. Discussed the
14 idea for a possible park one day. It provided that
15 opportunity. Nothing in the works, as of yet.

16 And it compliments protection directly across the
17 river. Altamaha and Camp Saint Mary's, those are two
18 other properties directly across from Pinckney Point to
19 the north that had also been protected through the
20 program, as well. Those weren't clearly identified on
21 that last map. So, additional protection that would
22 compliment or leverage each other.

23 Q Very good. And on this last page, do you get back
24 into some of the details that were in your summary
25 sheet? And I won't go through them again.

1 A It's just a -- it's a re-statement of the project.

2 Q All right. Very good. After the recommendation of
3 the Rural and Critical Lands Board, what happened next?
4 Where did it go?

5 A If the Land Board approves a project, it is put on
6 the agenda, if you will, for the next Natural Resource
7 Committee meeting for the Committee to, more or less,
8 hear the same presentation.

9 Q And is that a subcommittee, or a committee of
10 Council?

11 A It's a -- yeah, it's a standing committee of County
12 Council.

13 Q I'm going to hand you Plaintiffs' Exhibit 107.

14 A Thank you.

15 Q That I'd like you to let us know if you could
16 identify that.

17 A It appears to be the PowerPoint presentation that
18 would have been presented to the Natural Resource
19 Committee.

20 Q Did you prepare that? Do you believe you prepared
21 that?

22 A I believe I did. It looks extraordinarily similar
23 to my other presentation. At best, I prepared most of
24 it, or prepared the template. That's not to say that
25 some other individual may have added to it or modified

1 it, but it looks like something I produced.

2 Q Very good.

3 MR. WALKER: Your Honor, we would offer Exhibit 107
4 into evidence.

5 THE COURT: Any objection?

6 MR. ACHURCH: No objection.

7 THE COURT: Without objection, it's in evidence.

8 ITEM IDENTIFIED AS POWERPOINT PRESENTATION,
9 MARKED PLAINTIFFS' EXHIBIT NUMBER 107,
10 ADMITTED AS EVIDENCE.

11 BY MR. WALKER:

12 Q What happened at the Natural Land -- excuse me --
13 the Natural Resources Committee of Council? What did
14 they do after reviewing this proposal? Did they approve
15 it?

16 A It's my understanding they approved it, correct. I
17 don't believe I actually attended this meeting.

18 Q Did you continue to be involved?

19 A As I mentioned earlier, I continued to, to a
20 degree, communicate with the landowner, as well as Patty
21 Kennedy at the Land Trust, making sure that information
22 was passed along quickly and accurately. My
23 recollection about not being in the meeting, I think I
24 was informed that it had passed Natural Resources
25 committee, so I would communicate that back and forth.

1 So, I was involved, to a degree.

2 Q And at some point along the way, did you hand off
3 this project to others?

4 A Yes.

5 Q When did that happen?

6 A Handed off as part of a process, or did I, in this
7 instance, hand it off?

8 Q Well, I meant hand it off as part of the process.
9 Thank you.

10 A The project is presented, if you will, as it's
11 being described in these power points, at the Rural and
12 Critical Land Board, at the committee, and at County
13 Council, by Land Trust staff, or whomever the consultant
14 happens to be for the County. They present it to those
15 three sessions. If it's approved, it's then
16 transitioned over to closing attorneys who pick up the
17 project from there, so to speak. We stay involved
18 helping connect people, resources, information, to the
19 degree that we need to be.

20 Q Was this project approved by County Council?

21 A It was.

22 Q Shortly thereafter?

23 A It was.

24 Q Would that have been by Council on April 8, to the
25 best of your recollection?

1 A I believe so. Again, I didn't attend that meeting,
2 but I believe that's what we were notified of. Whatever
3 the record shows is when it was approved.

4 Q Did you participate in this handoff, this
5 transition from your group to the legal team, who were
6 going to proceed with the transaction?

7 A At most, I believe I made a connection between the
8 owners and the -- the County closing attorney, but --

9 Q Who was the County closing attorney?

10 A It's Tab Bendle. Mr. Bendle.

11 Q Who is seated over here?

12 A Yeah, of Howell, Gibson & Hughes, yeah. That
13 gentleman.

14 Q At some point, did you have a question about the
15 acreage, the accuracy of the acreage?

16 A I did. You'll -- you would have noted in these
17 presentations that, at one point, I had 270 acres
18 listed. I'm not sure if was including marsh acreage or
19 not. Sometimes, property comes with title to the marsh;
20 sometimes, it doesn't. Regardless, when we did further
21 research on the property, and we asked our GIS
22 consultant, or mapper, to put the -- put the property on
23 the map, the acreage came up south of that, around 229.

24 Thanks.

25 Q I'm handing you Plaintiffs' Exhibit 68, which is in

1 the notebook of exhibits. And it's a front-and-back
2 copy.

3 A Got it.

4 Q With emails, you start at the end, and work your
5 way to the front.

6 A Okay.

7 Q Okay? What is this?

8 A I believe this is a email communication between
9 myself and the owner, and I believe, Bill Herbkersman,
10 as well.

11 Q Okay. And did you have two questions?

12 A I did.

13 Q What were your questions?

14 A *A couple questions. I've been working*
15 *under the assumption that P.P., Pinckney*
16 *Point, is 270. County GIS shows it is 229.*
17 *Not a problem. Just need to know the accurate*
18 *number. What does the plat show?*

19 Q Also, and I don't know if I got this, what is the
20 date of your email?

21 A I'm sorry. The date of this email is April 2,
22 2013.

23 Q All right.

24 A And then, the second is:

25 *The road, who owns it? Is access going*

1 to be an issue?

2 And that's, again, I described the mapping. When
3 we mapped the property officially, to get the official
4 acreage, I think it demonstrated that there was a small
5 parcel at the tip of the property, which didn't turn up
6 in the acreage. It actually came up in a different
7 ownership. So, I was informing them of that, and just
8 asking, is that an issue. So, I think that's when I was
9 made aware.

10 Q Did the persons that you were sending the email to
11 and asking those questions get back to you within this
12 email?

13 A They did.

14 Q And before you get into that --

15 MR. WALKER: Your Honor, --

16 BY MR. WALKER:

17 Q Does this appear to be reasonable and accurate
18 rendition or photocopy of a print out of this email
19 thread?

20 A It appears to be.

21 Q Do you have any reason to doubt it?

22 A I have no reason to doubt it.

23 Q All right.

24 MR. WALKER: Your Honor, we would offer 68 into
25 evidence.

1 MR. BENDLE: No objection.

2 THE COURT: Without objection.

3 ITEM IDENTIFIED AS EMAIL THREAD
4 BETWEEN GARRETT BUDDS, LEE WOODDALL,
5 JOHN H. IRBY,
6 MARKED PLAINTIFFS' EXHIBIT NUMBER 68,
7 ADMITTED AS EVIDENCE.

8 BY MR. WALKER:

9 Q All right. If we could continue on.
10 Did you get a response back from Bill Herbkersman?
11 At the top of the second page there?

12 A I did. He responded --

13 Q Could we have this up, please, this page.

14 A I'm sorry.

15 Q Very good.

16 Go ahead, Mr. Budds.

17 A Sure. He responded shortly after. Same day.
18 Would you like me to read it?

19 Q Yes, please.

20 A *Garrett, the road, to my knowledge, are*
21 *having discussed it with Weston Newton,*
22 *is a county road. There was an additional*
23 *easement purchased by Stokes to --*

24 COURT REPORTER: I'm so sorry. Say that again,
25 please.

1 A From the beginning?

2 THE COURT: When you read, people tend to read
3 fast, and it's hard for her to take down.

4 A I'm sorry.

5 THE COURT: So, if you'll just slow down a little
6 bit.

7 A I'll do my best.

8 THE COURT: Thank you.

9 A Apologies.

10 Q Slow down and give it your theater voice. Go
11 ahead.

12 A *Garrett, the road, to my knowledge,*
13 *having discussed it with Weston Newton,*
14 *is a county road. There was an additional*
15 *easement purchased by Stokes, to allow for*
16 *development, i.e., fire trucks, et cetera.*
17 *I think there may have been legal action*
18 *a few years ago to codify the County*
19 *ownership. If you'd like, I can verify*
20 *with Weston. Bill.*

21 Q And then, let's go to the first page at the bottom.
22 Did you respond to that?

23 A I did. I responded shortly after, and I simply
24 said, *please do. Thanks.*

25 Q All right. And did Mr. Herbkersman respond to you

1 not long thereafter, on April 2, 2013, at 7:42?

2 A He did.

3 Q And what did he get back to you with?

4 A He said, *Weston concurred that there is a*
5 *prescriptive easement, so, good to go.*

6 Q Thank you. And was this, for all intents and
7 purposes, the end of your involvement with the project?

8 A I believe so, more or less.

9 Q Other than maybe a phone call or two?

10 A A phone call, two, email here and there.

11 Q All right. Thank you very much, Mr. Budds.

12 A You're welcome.

13 MR. WALKER: Please answer any questions that Mr.
14 Bendle has.

15 THE COURT: All right.

16 MR. BENDLE: All right. May it please the Court?

17 THE COURT: Yes, sir.

18 GARRETT BUDDS

19 CROSS-EXAMINATION BY MR. BENDLE:

20 Q Good morning, Mr. Budds.

21 A Good morning.

22 Q I appreciate you being here today.

23 A. My pleasure.

24 Q Bear with me, because I don't want to have to get
25 you to repeat everything that you've already covered.

1 I'm going to go through my outline, and I may pause, but
2 I'll get to the questions that we need you to answer for
3 us.

4 A Fair enough.

5 Q You said that your role at the Lowcountry Land
6 Trust, is it the same, essentially, as when you were
7 with Open Land Trust here in Beaufort County?

8 A A very similar role. I'm the director of
9 conservation at Lowcountry Land Trust. I oversee or
10 manage the entire conservation program for that
11 organization, as well.

12 Q And that's what you did for the Open Land Trust,
13 here in Beaufort?

14 A Correct.

15 Q Okay. And this has come up throughout the years,
16 Beaufort -- and I have to answer this question to the
17 general public all the time -- the Beaufort County Open
18 Land Trust is not affiliated at any -- with the County.
19 In other words, it's not like a department within the
20 County, correct?

21 A Correct. It's a private, non-profit organization.
22 It's a 501(c)(3) charitable organization. So, it's
23 privately chartered, and has its own board of -- board
24 of directors, trustees.

25 Q And the only affiliation that the Open Land Trust

1 has with the County is that they basically won the bid
2 -- won the bid, as far as being able to manage the
3 program for the County.

4 A Correct. They were contracted with the County to
5 manage the program. We answered an RFP.

6 Q So, you were never a county employee.

7 A Never been a county employee.

8 Q You said that you were contacted by Bill
9 Herbkersman in November of 2012. Is that right?

10 A I believe so, yes.

11 Q Had you had any dealings with this particular
12 parcel from 2010, when you came on board, through 2012,
13 as far as contact with anybody over county interests or
14 anything of that nature?

15 A I don't recall, no. I don't believe that I did. I
16 don't recall any contact, no.

17 Q And you said that, when you had your first meeting
18 with Mr. Herbkersman, that the meeting was also attended
19 by Lee Wooddall?

20 A Correct.

21 Q And he's the -- one of the owners, or represented
22 that he was one of the owners of Equity Resources?

23 A Correct. That owned the property.

24 Q And as far as you knew, Equity Resources held title
25 to that property?

1 A As far as I know, yes.

2 Q There were no other owners of the 229 acres, as far
3 as you knew?

4 A Not present, and he represented himself as the
5 owner.

6 Q Okay. You said you had some contact, as well, with
7 a John Irby.

8 A Correct, but only via these emails, those that I
9 just read from. He was copied on some of them. But I
10 -- I never -- I don't believe I ever actually met with
11 John Irby.

12 Q But you understood that John Irby was also a
13 principal in Equity Resources.

14 A That was my understanding from Lee. Via Lee, yes.

15 Q Mr. Walker asked you earlier, when you met with Mr.
16 Wooddall, were there any specifics discussed with
17 respect to any other entity that may have had an
18 ownership interest, or was there any discussions with
19 respect to a potential development?

20 A My -- my only recollection about a discussion of
21 others was Lee's characterization that they were
22 interested in moving in a new direction with the
23 property, and that they had entertained moving in a
24 different direction; and now, they wanted to move in a
25 new direction. I didn't really pursue it. It's not

1 really germane to the meeting at the time.

2 Q There were no discussions with respect to any
3 option agreements that may have been in place with
4 Equity Resources and any other entity?

5 A I don't recall that, no.

6 Q During your tenure with Open Land Trust -- and
7 forgive me if I've already asked this -- was there ever
8 any contact that you know of with Patty Kennedy or
9 yourself with any other -- or with any -- with respect
10 to any interest in the County acquiring any kind of
11 interest in the parcel?

12 A Prior to that meeting?

13 Q At any time between 2010 and --

14 A No.

15 Q -- the time that you left in April of 2013?

16 A No.

17 Q Do you recall there being any other contact?

18 A I don't believe -- I don't believe Ann Bluntzer was
19 ever contacted. I know that I wasn't. I don't believe
20 Patty was, as well. To my knowledge.

21 Q And you indicated earlier that, during that time
22 frame, that you had met with Mr. Herbkersman and Mr.
23 Wooddall. Who would your County point of contact, who
24 would that have been?

25 A Josh Gruber.

1 Q And at the time, he was a staff attorney, correct?

2 A Correct. County attorney.

3 Q Would there have been any contact that you would
4 have had with the Rural and Critical Lands Board?

5 A Not prior to that meeting. The Rural and Critical
6 Land Board meeting was the venue at which we presented
7 and discussed projects.

8 Q Okay. So, there wouldn't have been any contact
9 with any county employee other than Mr. Gruber, up until
10 such time that it was presented at Rural and Critical?

11 A Correct. No.

12 Q Were you contacted at any point by any
13 representative of Pinckney Point, as far as any interest
14 the County may have in the property?

15 A By Pinckney Point?

16 Q Pinckney Point, LLC.

17 A LLC? Not in an official capacity, where I knew
18 that it was Pinckney Point, LLC, contacting me, no.

19 Q Okay.

20 A No one identified themselves as we are Pinckney
21 Point, LLC.

22 Q So, you never had any knowledge, then, that
23 Pinckney Point, LLC, was a former owner, or may have had
24 an option, or anything like that?

25 A No.

1 Q Okay. Do you recall being contacted by Dan Keefer
2 in January of 2013?

3 A I do. Don't recall the specific date, but I had
4 been contacted by Dan on just one, two, maybe three
5 occasions, but at lease one occasion I can recall where
6 we discussed the project generally, correct.

7 Q And Mr. Keefer was one of the engineers that was
8 working for Pinckney Point. Is that correct?

9 MR. WALKER: Objection.

10 THE COURT: Basis?

11 MR. WALKER: It deals with the capacity of Mr.
12 Keefer, because, in his deposition, he said that he
13 thought he was working for the then-existing owner, who
14 was not Pinckney Point. And he, in fact, said he didn't
15 know who he was acting on behalf of, that it was not
16 made clear, and he didn't even know if he was authorized
17 to do it. And I don't think it would be appropriate to
18 suggest to the jury that there was authority when, in
19 his deposition, he said he had these casual
20 conversations, but didn't know if he was doing it on his
21 own, or with permission, or with the permission of whom.

22 THE COURT: Okay. And he's not testifying,
23 correct?

24 MR. WALKER: No.

25 THE COURT: Okay. Okay. I'm going to uphold the

1 objection, based on what you all are telling me.
2 Obviously, I wasn't at the deposition, so I don't know
3 what he said, so.

4 If I need to hear further argument, you need to
5 tell me.

6 BY MR. BENDLE:

7 Q Mr. Budds, you were present yesterday for Mr.
8 Bush's testimony, correct?

9 A I was.

10 Q And during that testimony, do you recall that Mr.
11 Bush testified that Mr. Keefer was their engineer?

12 A I do.

13 Q Okay.

14 MR. WALKER: Objection. He said he was their land
15 planner. The engineering firm was Ward Edwards.

16 MR. BENDLE: Pardon me, Judge.

17 THE COURT: Okay.

18 MR. BENDLE: Land planner.

19 THE COURT: Thank you.

20 BY MR. BENDLE:

21 Q So, as you sit here today, you do have knowledge of
22 what Mr. Keefer's role was in the project.

23 A As it was represented yesterday, as a land planner,
24 yes.

25 Q Okay. And you already testified that you did, in

1 fact, meet with him in January, or around January 2013.

2 A Some point in that time window, I did meet with Mr.
3 Keefer.

4 Q Do you remember what the purpose of that meeting
5 was? Why he had asked to speak with you on several
6 occasions.

7 A Mr. Keefer was curious about conservation options
8 on the property, and --

9 Q Okay.

10 MR. WALKER: Objection. Hearsay.

11 THE COURT: Okay. Sustained.

12 BY MR. BENDLE:

13 Q Other than Mr. Keefer, did anyone other -- or let
14 me ask you this. Did anyone other than Mr. Keefer from
15 Pinckney Point ever contact you?

16 MR. WALKER: Objection. He is suggesting in the
17 questioning he was contacting him from Pinckney Point.
18 In his deposition, he said he didn't know who he was
19 acting on behalf of. Object to the question.

20 THE COURT: Okay. Do I need to talk to you all? I
21 think he can say what he knows from his knowledge. It's
22 a question directly of him.

23 MR. BENDLE: Yeah. Judge, he can testify as to
24 what meetings he was in attendance to and who contacted
25 him, and what the content of those meetings were.

1 THE COURT: If he can, yes.

2 MR. BENDLE: Yes. If he has knowledge of it.

3 MR. WALKER: We would also have a relevance
4 objection, because, unless he knows that Mr. Keefer was
5 there on behalf of Pinckney Point associates, it
6 wouldn't be relevant to this dispute. And in his
7 deposition, he said he didn't know who he was there
8 acting for.

9 BY THE COURT:

10 THE COURT: Okay. We're at the point now where
11 you're testifying. Is now a good time to take a short
12 break? Is that all right?

13 MR. BENDLE: Yes.

14 THE COURT: Okay. Yes. Thank you. My jury says
15 yes. Again, ladies and gentlemen, do not discuss this
16 case. It wouldn't be appropriate to do so. We'll be
17 right back with you. Thank you.

18 JURORS LEAVE COURTROOM 10:50 A.M.

19 BAILIFF: Jury is clear, your Honor.

20 THE COURT: Thank you. Do I need a copy of Mr.
21 Keefer's deposition?

22 MS. LOHR: Your Honor?

23 THE COURT: Go ahead.

24 MS. LOHR: He can definitely testify. He can
25 testify to what his conversations were with Dan Keefer,

1 whether he knows -- whether he knows who Dan Keefer was
2 there on behalf of or not, because, by implication, you
3 know he's the land planner. Why else would the land
4 planner be talking to him, except on behalf of his
5 client? I mean, the jury can draw that inference. It
6 doesn't matter what he knew or didn't know in his
7 deposition. Now the jury knows who Dan Keefer is, and
8 he can say what his conversations with Dan Keefer were.

9 MR. WALKER: Your Honor, in his dep --

10 THE COURT: He -- okay.

11 MR. WALKER: I'm sorry.

12 THE COURT: He can say what his understanding is.
13 Even, let's say, for instance, Mr. Budds was wrong.
14 Even if he's incorrect, he can testify as to what he
15 believes, and who he believed he was dealing with. I
16 mean, obviously, you can, you know, you can cross him,
17 if you want -- or I mean, you can re-direct him. But
18 Mr. Keefer says at his time, he didn't know who he
19 represented.

20 MR. WALKER: I think there's a difference between
21 -- he was an independent contractor.

22 THE COURT: Okay.

23 MR. WALKER: And I think there's a difference
24 between an independent contractor and somebody who is a
25 direct agent.

1 THE COURT: Okay.

2 MR. WALKER: Of a party. And here, he's an
3 independent contractor, and what he says does not bind.
4 It's not a statement of an adverse party.

5 THE COURT: I understand that.

6 MR. WALKER: It's still hearsay.

7 THE COURT: Okay.

8 MR. WALKER: And so, it's hearsay, no matter what,
9 because it's not an admission of an adverse party, and
10 it's stated for the truth of the matter asserted.

11 THE COURT: Okay.

12 MS. MONOC: And I'm sorry to interrupt.

13 THE COURT: Yes.

14 MS. MONOC: But I think there's some confusion,
15 too, because Dan Keefer wasn't deposed. This is all
16 about Garrett's testimony.

17 THE COURT: Okay. Well, then, I am confused,
18 because I thought you were telling me as to what Dan
19 Keefer said.

20 MR. WALKER: This was in Garrett Budds' deposition.

21 THE COURT: Okay.

22 MR. WALKER: Dan Keefer didn't say any of this.
23 Garrett Budds testified to a conversation with Dan
24 Keefer. He testified that he enjoys a pleasant
25 relationship with him outside of his work at the Land

1 Trust, and that he had a couple of conversations with
2 him where Dan mentioned something about conservation and
3 outcomes. And he said he didn't know; he said he
4 thought he was there for the owner. The owner then
5 would have been Equity Resources. And he also didn't
6 know if Dan was doing it on his own, just to take back
7 to the owner, or if he had been asked by the owner. So,
8 it may have been -- and I'm looking for the page, your
9 Honor.

10 THE COURT: But just general information because
11 they were friends? I mean, is that what you're saying?
12 I mean, I guess the real opportune question is, is, was
13 he being paid? And did anyone pay him for it? I mean,
14 I understand your argument about him being an
15 independent contractor and whatever he says can't bind
16 because he's not an agent, but.

17 MR. WALKER: We don't think we paid him for it.

18 THE COURT: You didn't pay him for it? Pinckney
19 Point didn't? Did ERP pay him for it? Again, I don't
20 know.

21 MR. WALKER: Judge, I think --

22 MR. BENDLE: Well, I mean, these are questions that
23 I intended to ask Mr. Budds. I mean, he was there at
24 the meeting. He was contacted by Mr. Keefer. He didn't
25 contact Mr. Keefer. From what I understand, his

1 testimony was for the purposes of discussing whether or
2 not the County would be interested in placing
3 conservation easements on the property, should Pinckney
4 Point be able to acquire it back from Equity.

5 THE COURT: So, again, the significance of that is
6 just the information that Mr. Keefer found out?

7 MR. BENDLE: The significance of that, your Honor,
8 is that the County is looking at this property towards
9 an eye with conservation in mind.

10 THE COURT: Right.

11 MR. BENDLE: Whether we've got an easement on it,
12 or we have the opportunity to purchase it in fee, the
13 ultimate goal of County Council was to acquire this
14 property for conservation. And at that time, in January
15 of 2013, we were exploring options. We were exploring
16 options with the owner. We were exploring options with
17 the people that had an option on the property. It was
18 all towards an eye for conservation.

19 THE COURT: Okay. I hate to say, I thought that
20 was a given. I mean, it was public money. I mean.

21 MR. BENDLE: Right. And I think --

22 THE COURT: I'm sorry.

23 MR. BENDLE: -- I think that what they're trying to
24 prove here is that we were somehow trying to undermine
25 them, and --

1 MS. LOHR: Sneak around.

2 MR. BENDLE: -- throughout the process, sneaking
3 around, you know, dealing, you know, dealing with Equity
4 Resources, when, in fact, we were dealing with the
5 representative of Pinckney Point at the same time that
6 we were dealing with people, Mr. Wooddall.

7 THE COURT: Okay. So, you're trying to show that
8 you had some dealings with Mr. Keefer, who allegedly was
9 an independent contractor of Pinckney Point, and/or ERP,
10 but you say Pinckney Point. Is that correct?

11 MR. BENDLE: Yes.

12 THE COURT: So, it wasn't that you were sneaking
13 around. You were being completely straightforward. I
14 mean, I don't think there was any question it was for
15 conservation purposes. I don't think you could buy it
16 for any other reason.

17 MR. BENDLE: Right, right. We're just --

18 THE COURT: So.

19 MR. ACHURCH: I think part of the point is, your
20 Honor, is that they want to say, well, again, we were
21 sneaking around, we contacted Open Land Trust. Well,
22 they contacted Open Land Trust, as well. They, also,
23 were trying to potentially sell their interest to the
24 Open Land Trust for easement or fee or what have you.
25 They were exploring all options, as well.

1 THE COURT: When you say *they*, you're talking
2 about?

3 MR. ACHURCH: Pinckney Point, LLC.

4 THE COURT: Pinckney Point. Okay. So, they were
5 exploring selling their option? Or whatever they had at
6 the time.

7 MR. ACHURCH: Whatever -- in other words, if they
8 buy it back, my understanding is --

9 THE COURT: Right.

10 MR. ACHURCH: -- the testimony will be something
11 along the lines, Judge, and you may or may not be
12 familiar with this, but sometimes, a developer will say
13 they have got a hundred acres, and they've got to set
14 aside so much green space.

15 THE COURT: Right.

16 MR. ACHURCH: And what they oftentimes will attempt
17 to do is say, well, we'll open up, give you a little
18 more green space.

19 THE COURT: Right. To give us --

20 MR. ACHURCH: We'll sell --

21 THE COURT: -- a development.

22 MR. ACHURCH: We'll sell that land for a
23 conservation easement.

24 THE COURT: Of course.

25 MR. ACHURCH: And then, we shift all our density

1 over to the rest of the --

2 THE COURT: Right.

3 MR. ACHURCH: So, that's something the developers
4 look at.

5 THE COURT: And I certainly understand that.

6 MR. ACHURCH: So, this is -- the relevance of this
7 to this case is that, well, gee, you guys wanted it, and
8 you tried to give the, you know, tried to get this land
9 sold.

10 THE COURT: So, what you're just trying to show
11 through Budds is, is that Keefer had knowledge,
12 basically. Is that what you're trying to show?

13 MR. ACHURCH: Yes. Mr. Keefer, on behalf of
14 Pinckney Point, also toyed with --

15 THE COURT: had knowledge.

16 MR. ACHURCH: -- this idea about trying to sell to
17 -- they were approaching the Land Trust, as well.

18 THE COURT: Got it.

19 MR. WALKER: And we dispute that. He was not
20 authorized to do that. They can call Dan Keefer. But
21 to ask this witness what Dan Keefer said when this --

22 THE COURT: Well, I agree, that would be hearsay.
23 But I think he can testify that he had meetings wherein
24 Dan Keefer was present, and this is what was discussed.
25 He can't say Dan Keefer said, but he can say it was

1 discussed, a potential whatever, whether it be a sale,
2 whether or not it be an easement that would be given
3 over to whomever. I think he can say he was at that
4 meeting, because he was there. He just can't say Mr.
5 Keefer said. And again, I agree with you that Mr.
6 Keefer can't necessarily bind him if he's saying he
7 doesn't know, but.

8 MR. ACHURCH: He didn't say anything.

9 THE COURT: I think it's all relevant. I'm having
10 a hard time finding your non-relevance objection in
11 this.

12 MR. WALKER: Well, if he was there on behalf of
13 Equity Resource Partners, he said he understood he was
14 there on behalf of the owner.

15 THE COURT: Well, that's your argument, and that --
16 you can ask that. I mean, if you have someone from
17 Equity Resource Partners, who I'm understanding is
18 getting ready to testify, he can certainly say that he
19 was acting on behalf of us, not on behalf of Pinckney
20 Point.

21 MR. ACHURCH: And as far as Mr. Keefer knew, the
22 owner was still Pinckney Point, LLC. I mean, so this is
23 things he can pursue on cross-examination.

24 THE COURT: I think it's fair game. The only thing
25 that, you know, that Mr. Budds cannot say is that, you

1 know, so-and-so represented or said, because we don't
2 know. He's not here to be able to verify it. You know,
3 I'm talking to a lawyer. I don't need to tell them
4 about hearsay.

5 Okay. Let's do this, let's take about five
6 minutes, just as we gave the jury five minutes.

7 OFF THE RECORD 10:59 A.M.

8 BACK ON THE RECORD 11:25 A.M.

9 BY THE COURT:

10 THE COURT: You all ready to go?

11 MR. WALKER: Plaintiff's ready, your Honor.

12 THE COURT: Defendants ready?

13 MS. LOHR: Yes, your Honor.

14 THE COURT: All right. Bring them in, Rick. We're
15 going to go until 12:45, you all, with the one juror
16 that needs to go to her doctor's appointment -- or her
17 mother's doctor's appointment.

18 BAILIFF: You ready, your Honor?

19 THE COURT: Yes. Thank you.

20 BAILIFF: Jury's entering the courtroom, your
21 Honor.

22 THE COURT: Thank you.

23 JURORS ENTER COURTROOM 11:26 A.M.

24 THE COURT: Thank you. Well, welcome back, ladies
25 and gentlemen. I just wanted to also let you know, we

1 will break by 12:45 today. All right? Take a little,
2 extra-long lunch break, to make sure everyone is
3 accommodated, so I don't want anyone concerned about
4 that in any way.

5 At this time, we're going to go ahead and continue
6 the cross-examination of Mr. Budds.

7 Mr. Bendle, whenever you're ready.

8 MR. BENDLE: Thank you, your Honor.

9 THE COURT: Thank you.

10 GARRETT BUDDS, CONTINUE

11 CROSS-EXAMINATION, BY MR. BENDLE:

12 Q Mr. Budds, getting back to the questions that we
13 were focusing on before the break, did you have a
14 conversation with Dan Keefer in January of 2013?

15 A Unsure about the exact date, but yes, I did.

16 Q Okay. And did you understand that Mr. Keefer was
17 affiliated somehow with Pinckney Point, LLC, at that
18 meeting?

19 MR. WALKER: Objection.

20 THE COURT: Okay. Just go ahead and answer the
21 question. You can go ahead.

22 BY MR. BENDLE:

23 Q Was it your understanding that there was some sort
24 of affiliation with Mr. Keefer and Pinckney Point?

25 A My understanding from the meeting was that Mr.

1 Keefer was representing an entity interested in
2 developing the property, but a development interest, per
3 se, an ownership or development interest.

4 Q And tell me what your recollection of the content
5 of those discussions were.

6 A They were fairly general, and we discussed
7 potential conservation options on the property that
8 might be a possibility of a development scenario. I
9 tend to sketch a lot. I think we probably sketched out
10 a few pictures of what the property might look like if
11 we entertained some kind of conservation option on it.
12 By recollection, maybe a third of it might be protected,
13 two-thirds that might be developed, different iterations
14 such as that. But that's, more or less, what we
15 discussed.

16 Q And around that same time frame, you testified, I
17 believe, earlier, that you were also speaking with Lee
18 Wooddall. Would that be correct?

19 A Correct.

20 Q Okay. And when you were speaking with Mr.
21 Wooddall, were you speaking about different types of --
22 were you speaking about different types of acquisitions,
23 or at that time, was it just focused on a fee
24 acquisition?

25 A No, we discussed the three deal structures that I

1 identified earlier.

2 Q Okay. And speaking of that proposal that you were
3 just referencing, it's Plaintiffs' Exhibit 105, do you
4 still have a copy of that proposal?

5 A I do.

6 Q You went over several bullet points in your
7 testimony with respect to the project background. One
8 of the bullet points that you were not asked about was
9 the fifth bullet point. Could you please read that into
10 the record.

11 A It says:

12 *Owner is interested in conservation*
13 *outcome for the property, and would entertain*
14 *one of the three scenarios: conservation*
15 *easement, fee with a lease back, or fee simple*
16 *absolute.*

17 Q So, at the time that the acquisition was being
18 proposed to Rural and Critical, it was your
19 understanding that Mr. Wooddall, an owner of Equity, was
20 interested in placing this property under some sort of
21 conservation easement, or otherwise?

22 A Correct.

23 Q Other, with conservation in mind.

24 A He either wanted to sell the property to the
25 County's conservation program, the Rural and Critical

1 Program, or sell an easement to the County's
2 conservation program, the Rural and Critical Program.

3 Q How would the County Rural and Critical projects
4 funded?

5 A They're funded through voter referendum. It's on
6 the ballot. You probably remember it from time to time.
7 About every five years, they -- the County Council likes
8 to place it on the ballot, and if the voters approve the
9 referendum, the County will bond for monies to fund the
10 program.

11 Q So, it was money from these bond referendums voted
12 on by the voters of Beaufort County that funded the
13 acquisition of Pinckney Point?

14 A Correct. That's the sole source of the program's
15 funding is bond referendum.

16 Q And you may have gone over this, but if you would
17 briefly tell us again how the properties are identified
18 or chosen for conservation to the program.

19 A Sure. We have a general working knowledge of
20 properties of importance from a conservation perspective
21 throughout the County. Frankly, throughout the entire
22 Lowcountry. But within Beaufort County in particular,
23 those areas of interest are consolidated under a
24 different set of -- or a set of different maps, or
25 mapping tools, one being the County Greenprint. And we

1 developed others in-house, as well, that further
2 identified specific sections of the County for their
3 regional importance. We broke the county up into
4 different sections, actually based off the different
5 rivers in Beaufort County. So, within each river system
6 or watershed, there were properties that were more or
7 less important within that watershed, so we focus on
8 those.

9 Q And was Pinckney Point identified on that
10 Greenprint in a particular focus area?

11 A I believe that it is. I don't have the 2006
12 Greenprint in front of me, but my recollection is that,
13 on the Greenprint, Pinckney Point falls within a general
14 area of focus on the map. I don't believe it's a focus
15 in and of itself, but it falls within an area on the
16 map.

17 Q I'm going to hand you up a copy of what I believe
18 you just referenced as the 2006 Greenprint.

19 A Yeah.

20 THE COURT: Thank you.

21 MR. BENDLE: Um-hmm.

22 BY MR. BENDLE:

23 Q Does that look like it's an accurate copy of the
24 Greenprint that was produced in 2006 for the program?

25 A It does.

1 MR. BENDLE: I'd like to move that into evidence.

2 THE COURT: Any objection?

3 MR. WALKER: No objection, your Honor.

4 THE COURT: Without objection, it's in evidence.

5 I'm sorry, what was that again, sir?

6 MR. BENDLE: 4.

7 MR. WALKER: I'm sorry. What was the exhibit
8 number?

9 A 4.

10 MR. WALKER: Oh. This was Exhibit 4 to his
11 deposition. So, it would be Defendant's Exhibit --

12 THE COURT: What number would it be?

13 MR. WALKER: Yeah, what number would it be?

14 MR. BENDLE: 17.

15 THE COURT: Thank you.

16 MR. BENDLE: 17.

17 THE COURT: Thank you.

18 MR. WALKER: Thank you.

19 THE COURT: Well, we need to give it to Wanda to
20 mark, whatever she has.

21 ITEM IDENTIFIED AS GREENPRINT MAP,

22 MARKED DEFENDANT'S EXHIBIT NUMBER 17,

23 ADMITTED AS EVIDENCE.

24 BY MR. BENDLE:

25 Q Mr. Budds, could you identify -- and you may need

1 to come down and point.

2 A Sure.

3 Q If you don't mind. Where the focus area of this
4 tract falls in.

5 A Sure.

6 Q Is located.

7 THE COURT: Thank you.

8 GARRETT BUDDS: Thank you.

9 BY MR. BENDLE:

10 A So, this is the Colleton River. This is the
11 Okatie. So, this area here, outlined in that heavy
12 purple or blue line is the focus area on the screen
13 print.

14 Q Okay.

15 A So, Pinckney Point falls within this.

16 Q So, it's just one of several or many parcels within
17 that focus area.

18 A I don't know the number exactly, but many, many
19 parcels fall -- or different properties fall within this
20 particular polygon.

21 Q Within this particular focus area that you just
22 identified, has the County purchased any other
23 properties in fee, or did they place conservation
24 easements on any properties also located within that
25 focus area?

1 A I believe -- I believe, specific to this map, there
2 are at least one or two others that have been protected
3 over time. One on the Colleton River side, and then,
4 perhaps, just on the southern edge. And then, there's
5 additional properties just below, in that other focus
6 area. And then, across the river, in that other purple
7 focus area, there have been properties there, as well.
8 They were demonstrated in greater detail in that larger
9 map that was on the screen earlier, where it said *Okatie*
10 *Conservation Area*.

11 Q Um-hmm.

12 A It's, more or less, a generalization of those
13 polygons on the blueprint -- or the Greenprint, excuse
14 me.

15 Q And you testified earlier, it's part of choosing
16 these properties, particularly on the green map.
17 Otherwise, you guys do sort of a data analysis. And I
18 believe that you testified earlier, when your proposal
19 was presented, that the score was 8.81. Is that
20 correct?

21 A That's what was in the presentation, so that would
22 be correct.

23 Q Can you explain to the jury what that means. I
24 think you've already explained sort of the ranking
25 sheet, but can you explain what an 8.81 means, as far as

1 conservation value?

2 A Sure. Out of -- it's a -- ultimately, it's on a
3 scale of ten. To get there, it's a segmented ranking.
4 So, there's different characteristics that a property
5 might have, and those characteristics or categories each
6 have different values that the property might have.
7 So, there might be historic resources, cultural
8 resources, water quality, natural, you know, forest land
9 habitat, et cetera, et cetera. So, there's these
10 different categories. Each of those gets a segmented
11 ranking, and then, we average those together. And then,
12 we do an ultimate ranking, an average of all. Point
13 being though, that the higher the number, the more
14 important the property is. So, an 8.81 was maybe one of
15 the highest I had ever ranked.

16 Q And on that particular ranking sheet, public use is
17 one of the considerations that's on that sheet, correct?

18 A It is.

19 Q Okay. So, it is considered before properties are
20 acquired by the County through the program.

21 A It is. My recollection is that there may be seven
22 or eight general categories. Within each of those, I
23 think there's three subcategories. And so, under one of
24 the generals, one of the subcategories, is public use.

25 Q And with respect to this particular piece of

1 property, when you ranked it, was public use a primary
2 consideration, a secondary consideration, or was it
3 considered at all?

4 A I don't recall what -- I mean, without the ranking,
5 I don't recall what ranking we gave that public use
6 line, per se. We really consider all the uses in total.
7 My recollection, and it would hold true today, is the
8 primary driver for protecting this property was the
9 resource value, both the habitat value on the property,
10 as well as the contribution to water quality that its
11 protection would achieve. That was always the driver
12 for the project.

13 Q So, that's what --

14 A Out of the Land Trust, yeah.

15 Q Those, then, would be your primary --

16 A The primary goals were protection of habitat,
17 protection of water quality, and protection of the
18 connectivity of habitat, and water quality, and the
19 recreational amenity within the corridor. Public use is
20 secondary.

21 Q How would, if, in fact, there was, emphatically, an
22 inability for the public to use it, or for it to ever be
23 open to the public, how would that have affected the
24 ranking of 8.81 ranking?

25 A Well, as I described how the sheet worked earlier,

1 you have the eight larger categories. And within each
2 of those, you've got three subcategories, and each of
3 those categories gets a number. So, if one of those
4 subcategories, if that number was lowered, it would --
5 it would bring down that weighed average, but by math,
6 it wouldn't bring it down too terribly much, because it
7 scored, by the recollection, and frankly, by the weight
8 of that large number. It scored pretty high on
9 everything else. So, were we to remove the public use
10 piece, it would come down, but I don't think it would
11 come down to the point where it would compromise the
12 quality of the project at all. I think it still would
13 have carried forward.

14 Q Okay. Had the County purchased other properties
15 for the Rural and Critical Program whereby the public is
16 denied access?

17 A Well, by virtue of the program's history, and its
18 structure, and I'm not exactly sure where it stands at
19 this point in time, but over the history of the program,
20 up 'til the time of my departure, the County had
21 protected, I believe, more or less, twenty thousand
22 acres, and that was -- about ten thousand of it was
23 conservation easements that were purchased on private
24 property; and the other ten thousand was fee purchases,
25 pieces of property that the County had purchased

1 outright.

2 There -- there had not been, at that point in time,
3 developed a plan for accessing any of that property.
4 Again, it was an idea and a concept that was in its,
5 really, sort of a theoretical stage. We did know that
6 there were properties across the entire county that were
7 purchased in fee that would never been accessed because
8 of their fragility or because of their uniqueness. They
9 might have Indian shell mounds on them; or maybe it's so
10 sensitive a habitat that folks tromping around in the
11 woods might damage that critical habitat for a
12 salamander or something like that.

13 So, there were certainly properties that, I think,
14 everyone understood they were bought to protect that
15 resource, and they likely wouldn't be opened up for
16 public use. It was certainly contemplated at some point
17 in the future, certain properties were going to lend
18 themselves to be open to the public. Those were never
19 identified. The only County property, I think, at that
20 point that had been fully open to the public was Pigeon
21 -- or not Pigeon Point -- Widgeon Point, on a limited
22 basis, and also, the lake property on Lady's Island.

23 Q Crystal Lake?

24 A Crystal Lake, correct. Beyond that, there was no
25 -- there was no plan for opening anything else.

1 Q And kind of, I guess, for example, to speak to what
2 you just testified to, the County has, in fact,
3 purchased things like islands and hummocks and things
4 like that, that are inaccessible by land?

5 A Correct.

6 Q And that we intended not to open to the public. Is
7 that right?

8 A Correct. They provide ecological and habitat value
9 for the County. So, a lot of the wildlife that Beaufort
10 is replete with and that we all enjoy, takes refuge on
11 that. And they also positively contribute to water
12 quality, which Beaufort's known for.

13 Q You testified earlier through Mr. Walker's
14 questioning that there were a good deal of conceptual
15 uses that involved public access or public use of the
16 park. Was there ever a conceptual design or plan
17 implemented or presented to any board or to Council,
18 with respect to the public's access or use of this
19 property?

20 A To Pinckney Point?

21 Q Right.

22 A Not to my knowledge.

23 Q And again, that public use would have been a
24 secondary consideration throughout the process of
25 approval?

1 A Correct.

2 Q You explained earlier, very well, as far as the
3 process is concerned, how it's pitched. First, the
4 Rural and Critical. Who sits on the board of Rural and
5 Critical? Not necessarily the individuals, their names.

6 A Yeah.

7 Q But who -- how do you become a board member on
8 Rural and Critical?

9 A They're appointed positions, and they're appointed
10 by County Council district. So, each County Council
11 member appoints a representative to sit on the Rural and
12 Critical Board. So, there's one representative from
13 each district around Beaufort County.

14 Q Are there any employees of Beaufort County that sit
15 on Rural and Critical Lands?

16 A No.

17 Q And the Natural Resources Committee, where it goes
18 after approval from Rural and Critical, who makes up
19 that committee?

20 A The members of County Council the chairman elects
21 to appoint to that committee. It's all County Council
22 members, I think, at the discretion of the chair of
23 County Council. My County politics is a little rusty.

24 Q When you met Mr. Herbkersman and Mr. Wooddall in
25 November of 2012, how did you guys access that 229

1 acres?

2 A Pinckney Colony Road, straight onto the property.

3 Q And do you recall there being any discussions with
4 Mr. Wooddall, who, at the time, owned -- he was with
5 Equity Resources and owned the property, do you recall
6 having any discussions with respect to problems
7 involving access?

8 A During the land visit? Site visit? No, I don't
9 recall a conversation at that time. It was fairly
10 general. My recollection is that the only time it was
11 brought up was in the email correspondence I testified
12 to earlier.

13 Q And you gave some testimony earlier with respect to
14 use and your role in all of this. I understood you to
15 say that you basically followed the project until you
16 left for the Land Trust in Charleston, some time in
17 April, maybe, of 2013? Is that correct?

18 A I believe I was actually splitting time between the
19 Open Land Trust in Beaufort and the Land Trust in
20 Charleston in the month of March. I -- I know that I
21 was here to give the presentation to the Rural and
22 Critical Land Board on the 14th of March, so I believe I
23 was here that week. After that, the second half of
24 March, I believe I was in Charleston full time, and only
25 emailed or had telephone correspondence.

1 Q Do you recall when County Council ultimately
2 approved the purchase of Pinckney Point?

3 A I don't remember the specific day, but I think it
4 was at the next -- or at the subsequent committee
5 meeting, and then, subsequent County Council meeting
6 that fell on the calendar.

7 Q Okay. So, that would have been after it was
8 pitched to Rural and Critical in March on 2013?

9 A Correct.

10 Q So, it would have been at least April.

11 A Correct.

12 Q 2013, that it went to Natural Resources and the
13 full Council?

14 A Correct.

15 Q Do you know when the due diligence period starts?
16 In other words, when title work would have been ordered?
17 When was that typically done?

18 A The Land Trust doesn't do any of that in-house.
19 So, any due diligence work that we do, legal due
20 diligence -- I use that term very loosely. It's really
21 anything that we happen to have on file as part of
22 putting the project together. So, if I have a plat or
23 map or things of that nature, I'll then provide them to
24 the firm, again, Howell, Gibson & Hughes, that manages
25 the closings for the County, I'll provide the firm with

1 anything that we have on file. It's really incumbent
2 upon them, as closing agent for the County, to order
3 title and go through the whole closing process.

4 Q And isn't it true that it's typically, or almost
5 never, is it done until after Council approves the land
6 acquisition?

7 A Typically, yeah. I mean, typically, in a land
8 transaction, you don't begin expending money on due
9 diligence until you know it's approved. So, it would
10 surprise me if it were.

11 Q So, any issues with respect to access or title
12 problems, if there were any, would have been discovered
13 after Council approval, correct?

14 A Correct. I mean, it's -- as it related to title.

15 Q And it was after you had left the Land Trust here
16 in Beaufort.

17 A Correct.

18 Q Okay. And you were never part of any process, as
19 far as determining legal access?

20 A No. Not to my recollection, no.

21 Q What was the, just generally, the feedback that you
22 got from the community, the Pinckney Point community and
23 the citizens of Beaufort County, after the --

24 MR. WALKER: Objection.

25 THE COURT: Basis?

1 MR. WALKER: Hearsay.

2 THE COURT: Okay.

3 MR. BENDLE: I'm asking again what his feedback is,
4 Judge.

5 THE COURT: It would have to be in general if --

6 MR. BENDLE: That's what I said.

7 THE COURT: He can say his thoughts.

8 MR. BENDLE: Yeah, generally.

9 THE COURT: Not anything anyone particularly said.
10 Okay.

11 MR. BENDLE: Sure.

12 BY MR. BENDLE:

13 Q What was the feedback that you got, generally, from
14 the community of Pinckney Point and the citizens of
15 Beaufort County with respect to the acquisition of this
16 property by the County?

17 A Generally, I believe that the acquisition and
18 protection of the property was viewed favorably. I
19 think it was a positive sentiment. Historically, there
20 had been a -- I mean, there were even bumper stickers
21 that said *Save Pinckney Point*. So, you know, there was
22 certainly a large body of the -- of the population here
23 that would view this outcome as being favorable, and
24 that's my general recollection as a people. I didn't
25 hear anything negative about it. I never got one

1 negative comment from anybody about the County's
2 acquisition of the property.

3 Q And what is your opinion, as far as the acquisition
4 by the County, as far as the help of the program?

5 MR. WALKER: Objection. He's not been listed as an
6 expert.

7 THE COURT: Okay.

8 MR. BENDLE: I'll withdraw the question.

9 THE COURT: Thank you.

10 MR. BENDLE: That's all, your Honor. Thank you,
11 Mr. Budds. I appreciate your time.

12 THE COURT: Okay.

13 GARRETT BUDDS: Thank you.

14 THE COURT: Any re-direct?

15 MR. WALKER: Just to clarify one or two things.

16 GARRETT BUDDS

17 RE-DIRECT EXAMINATION BY MR. WALKER:

18 Q I think there was some suggestion that your
19 conversation and your meeting with Dan Keefer was in
20 early 2013. Could it have been early 2012? The first
21 quarter of 2012?

22 A I don't recall. It could have been in 2012, early.
23 I just don't recall. I mean, it was -- it was at some
24 point prior to this project coming online. But it may
25 have been.

1 Q Okay. And would it be fair to say that, when you
2 talked to him, you didn't know whether he was there on
3 behalf of somebody, or he was getting information to
4 pitch something to the owner that he might want to
5 propose to them?

6 A Perhaps, yeah.

7 Q Okay. In terms of County personnel who may have
8 been contacted before the presentation, you did mention
9 you'd talked to Planning staff before the presentation
10 to the Rural and Critical Lands Board on March 14th,
11 correct?

12 A Yeah, Amanda Flake, the Natural Resource planner
13 for Beaufort County.

14 Q Is she an employee of the County?

15 A She is.

16 MR. WALKER: All right. Thank you very much for
17 joining us today.

18 GARRETT BUDDS: My pleasure.

19 THE COURT: Anything further?

20 MR. BENDLE: No, your Honor.

21 THE COURT: Mr. Budds, you are excused, sir. Thank
22 you.

23 A Thank you. You're welcome.

24 MR. WALKER: Plaintiff calls John Kunkel.

25 THE COURT: Come on forward, Mr. Kunkel.