THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

RECEIVED
JUN 14 2018
SC Court of Appeals

Case No. 2016-CP-10-1560
Appellate Case No. 2017-002546

CARPENTER BRASELTON, LLC, ... Appellant,

vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

RECORD ON APPEAL – VOLUME II

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-1560
Carpenter Braselton, LLC,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
Ashley Roberts, Jeremy Cook and Salaheddine Ezzaoudi, LLC; and CCT Reserve, LLC	)	
	)	
Defendants.	)	
	)	

FILED
2017 SEP 20 PM 3:14
JULIE J. ARMSTRONG
CLERK OF COURT

TO: DEMETRI "JIM" K. KOUTRAKOS, ESQUIRE, Attorney for Defendants:

Plaintiff, by and through its undersigned counsel, submits the following Memorandum in Opposition to Defendants' Motion for Summary Judgment. For the reasons set forth below, Plaintiff respectfully requests that the Court deny Defendants' motion.

INTRODUCTION

Defendants are seeking summary judgment based on an argument that rests entirely on the Defendants' introduction of extrinsic evidence in an effort to inject contrived ambiguity into the four corners of the plat at issue in this case, which is unequivocally unambiguous on its face. The plat was prepared by F. Elliotte Quinn, III, a professional land surveyor, and is entitled "PLAT OF SUBDIVISION OF A 11.95 AC. TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS LOCATED ON JAMES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA." It was recorded December 31, 1990 in the RMC Office for Charleston County in Plat Book CB at Page 130 (hereinafter the "Plat"). Defendants have introduced an affidavit of Mr. Quinn and obtained a litany of documents through FOIA requests and discovery in an attempt to obfuscate and confuse an otherwise simple and straight-forward matter; namely, that the Plat (and

the language contained therein) speaks for itself. The restriction at issue is unambiguous on its face and as such prevents Defendants from building on the property at issue. No amount of extrinsic evidence should be allowed to introduce an ambiguity where none exists.

FACTS

Plaintiff is the owner of certain property in Charleston County, including a parcel of land identified as lot C-5 on the Plat. Edward L. Terry is the authorized agent of Plaintiff and has been involved in approximately 200 real estate development projects during his professional career. He has personally worked in the residential development and/or homebuilding business for over forty years and has built up valuable goodwill and reputation in that field. Mr. Terry's wife is the sole member and manager of the Plaintiff. In his capacity as authorized agent of Plaintiff, Mr. Terry was extensively involved in the purchase of Lot C-5, including reviewing related documents and visiting the property.

The deeds conveying Lots C-2, C-3, C-4 and C-5 to the Defendants and Plaintiff specifically state that the conveyances are being made subject to all restrictions, reservations, easements, and other limitations that appear of record, including on the recorded plats. Each of the deeds conveying Lots C-2, C-3, C-4 and C-5 to the Defendants and Plaintiff specifically reference the Plat. The Plat has been public record since December 31, 1990 and contains a notation near the center of the page in all capital letters that reads: "THESE LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES." No document or record has been filed in the RMC Office for Charleston County purporting to amend, waive, or rescind the agricultural restriction stated on the Plat and referenced in the deeds to the parties. Plaintiff purchased Lot C-5 in reliance on the agricultural restriction stated in the Plat, which created and limited the use of Lots C-2, C-3, C-4 and C-5. Deposition of Edward L.

Terry, March 22, 2017, 78:1-79:21, attached hereto in its entirety as **Exhibit A**. Defendants seek to sell their lots to purchasers who intend to build residential structures on one or more of the lots, in clear violation of the valid restriction limiting the use of those lots to agricultural purposes only.

ARGUMENT

I. The use restriction located on the plat is unambiguous and prevents Defendants from building on the property.

Restrictive covenants are contractual in nature. Seabrook Island Prop. Owners' Ass'n v. Berger, 616 S.E.2d 431, 434 (S.C. Ct. App. 2005). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." Hardy v. Aiken, 631 S.E.2d 539, 542 (2006). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of the property." Hamilton v. CCM, Inc., 263 S.E.2d 378, 380 (S.C. 1980). Despite this general rule of strict construction, such restrictive covenants remain fully enforceable when their intent is clearly expressed. Sea Pines Plantation Co. v. Wells, 363 S.E.2d 891, 894 (S.C. 1987). "A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant." Id.

A. A plat referenced within a deed can create a valid restrictive covenant.

First, Defendants, in their motion for summary judgment, fail to cite any support for their proposition that plats "are not the proper way to restrict property." See Def. Summ. J. Mot. at 11. Rather, Defendants only cite to Smith v. Commissioners of Public Works of City of Charleston, which merely says that "[r]estrictive covenants are *commonly* created by a recorded declaration of a restrictive covenants which is executed and recorded in the same manner as a deed." 312 S.C. 460, 466 (Ct. App. 1994) (emphasis added); Def. Summ. J. Mot. at 11. While this is surely one

way to create a restrictive covenant on land, it is well established that there are several other ways, including (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 628 S.E.2d 902, 913 (S.C. Ct. App. 2006); see also Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975) ("[P]urchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat.").

Nor is there any support for Defendants contention that the plat in question was not signed. See Def. Summ. J. Mot. at 11. There are clearly signatures on the Plat and, regardless, even unsigned restrictions can create valid restrictions on property. See 17 S.C. Jur. Covenants § 63 (explaining that "(1) irrespective of their validity, the restrictions were incorporated by reference into the deed to the grantees; and (2) in any event, the unsigned restrictions gave notice of the restrictions and the general scheme incorporated in them."); see also 20 Am. Jur. 2d Covenants, Conditions and Restrictions § 158, n. 2 citing Parrish v. Newbury, 279 S.W.2d 229 (Ky. 1955) ("[B]uilding restrictions properly written upon a recordable plat become part of [the deed] and constitute constructive public notice of the restrictions.").

When a deed describes land shown on a plat, that plat becomes part of the deed. Defeo v. Community Services Assocs., Inc., No. 2007-UP-357, 2007 WL 8327948, at *2 (S.C. Ct. App. 2007). The plat in Defeo contained the following restriction on the lot in question: "RESERVED FOR FUTURE USE FOR GOLF COURSE." Id. at 1. In that case, the Court of Appeals rejected the developer's argument that this language merely reserved its right to develop the land for golf course use, but did not prevent it from developing the land for other purposes, such as for residential use. Defeo, 2007 WL 8327948 at *2. The court held that nothing in the phrase conveyed

a similar intent to develop the lot for non-golf course use, and therefore "the clear, unambiguous language of the Plat restrict[ed] the Lot to golf course use *only*." Id. (emphasis added).

Likewise, the settled principles of Marshall v. Columbia & E.C. Electric Street Ry. Co., 73 S.C. 241, 53 S.E. 417 (S.C. 1906) are instructive.[1] There, the defendant owned a large acreage which was platted for the purpose of laying out the town of Eau Claire, South Carolina. Marshall, 53 S.E. at 418. At the intersection of two main streets, about four acres were designated on the map as the 'Circle.' Id. The plaintiff purchased large abutting lots which were described by reference to a plat, and the 'Circle' was designated as one of the boundaries of her property. Id. The defendant also orally represented to the plaintiff that the 'Circle' which bordered her lots had been dedicated for public purposes and would be "kept open," a fact upon which the plaintiff relied in making the purchase. Id. The defendant later altered its plan and subdivided the area of the 'Circle' into lots which were sold to various purchasers. Id.

The plaintiff brought an action to enjoin the defendant and its subsequent purchasers from building on the 'Circle' previously dedicated for public uses only. Marshall, 53 S.E. at 418. The court concluded that the seller had dedicated the 'Circle' to public uses and that the plaintiff, having bought her land in reliance on that fact, had an easement in the 'Circle' area and none of it could be sold as lots to others who had notice of her contention that it should remain open to the public. Id. at 419. In affirming the lower court's issuance of a permanent injunction, the South Carolina Supreme Court said that, "[e]ven if the 'Circle' was not dedicated so as to confer rights that could be enforced by the public, nevertheless, if the [defendant] represented to the plaintiff

[1]While Marshall deals with an easement, as opposed to a restrictive covenant, for purposes of incorporation by reference—this is a distinction without a difference. See e.g., Newington Plantation Estates Ass'n v. Newington Plantation Estates, 318 S.C. 362, 365 (1995) (finding both restrictive covenants and easements based on a recorded plat referenced in a deed).

that the 'Circle' would be kept open, and thereby induced the plaintiff to purchase her lots, such representations would be binding upon the defendant." Id. at 421.

Here, the language of the plat at issue is clear and unambiguous. It states: "THESE LOTS C-2, C-3, C-4, C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES." As in Defoe, this language unequivocally created a restrictive covenant for the use of the Plat in question. Plaintiff purchased Lot C-5 in reliance on the agricultural restriction stated in the Plat (which created and limited the use of Lots C-2, C-3, C-4 and C-5), as Plaintiff intended to, and did, in fact, build a barn and is now utilizing its property adjacent to these lots for a horse farm.

Defendants also try to exploit the fact that Plaintiff bought Lot C-5 and that therefore, Plaintiff must have known there were issues with the agricultural restrictions since Defendant Roberts' house was already existent on Lot C-3. Mr. Terry testified that he relied on his title insurance company and the title insurance policy it issued as to Lot C-5 to conclude that the restriction on the property for only agricultural use was valid. Terry Dep., 72: 25-73:10. The title insurance company took exception to the agricultural building restriction in its policy. See Chicago Title Insurance Company Binder, Schedule B- Section 2, Exception 7, **Exhibit B.** Exception 7 of Schedule B-Section 2, provides as follows:

> Subject to any and all applicable easements, restrictions, conditions, rights-of-way, setback and other matters which may be disclosed by that certain plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 AC. TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County.

Note Building Restriction shown on said plat: "These lots C-2, C-3, C-4 and C-5 for Agricultural Use only, not to be used for Building Purposes:

Exhibit B (emphasis added).

Mr. Terry also testified that the deeds conveying Lots C-2, C-3, C-4 and C-5 specifically state that the conveyances are being made subject to all restrictions, reservations, easements and other limitations that appear of record *including on the recorded plats*. Terry Dep., 85: 10-15 (emphasis added), **Exhibit A**. He also relied on his review of the plat and advice from his attorney. Terry Dep., 78:19-79:22, **Exhibit A**. Defendants' contentions that Plaintiff was made aware through Mr. Terry that the restriction on the property for only agricultural use was somehow defective is without merit or support in the record.[2] The Plat created a valid restrictive covenant that requires the Lots C-2, C-3, C-4 and C-5 be used for agricultural purposes only. At a minimum, there remain genuine issues of material fact in this case that are not appropriately decided at this summary judgment stage.

B. When a restriction on the use of property is unambiguous, only the text of the document can be used for interpretation.

Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning. Donald E. Baltz, Inc. v. R.V. Chandler & Co., 248 S.C. 484, 151 S.E.2d 441 (1966).

Contrary to Defendants contention, the language "subject to" can create a valid restriction on the use of property. See e.g. SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72,

[2] Plaintiff has not yet been able depose Defendant Roberts or Defendant Cook, who currently reside in California. Summary judgment would be a drastic and premature remedy where, as here, discovery—including taking party depositions—has not yet been completed. See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); see also Robertson v. First Union Nat. Bank, 350 S.C. 339, 346–47, 565 S.E.2d 309, 313 (Ct. App. 2002) ("Generally, it is not premature for the trial court to grant summary judgment ***after all relevant parties have been deposed*** because the litigants have had a full and fair opportunity to develop the record in the case.") (emphasis added).

84 (Ct. App. 2015) (upholding clause that said "every Condominium . . . is hereby . . . **subject to** the restrictions, easements, conditions, and covenants prescribed and established herein.") (emphasis added). Defendants misconstrue Smith v Second Church of Christ, Scientist, 351 P.2d 1104 (Ariz. 1960), along with the section of 20 Am. Jur. Covenants, Conditions, and Restrictions §151 (2017), where the case is described. Like Smith, the cases in §151 merely say the "subject to" language will not create a restriction that did not originally, as a matter of fact, exist. See e.g., Sargent v Leonardi, 223 Mass 556 (1916) (finding that "subject to those convenient restrictions" language did not operate to impose the restrictions on the land since the recital was one of a fact *which never existed*).

Defendants' motion suggests the restriction is ambiguous since there are "two reasonable explanations." Def. Summ. J. Mot. at 13. In support of its interpretation, Defendants cite to an affidavit and other extrinsic evidence of intent. Id. Yet, the first step—which Defendants concede in their brief—is to ascertain whether the language is ambiguous from *the face of the document*, ignoring outside evidence of intent. See Def. Summ. J. Mot. at 12 (citing Hawkins v. Greenwood Development Corp., 328 S.C. 585, 592 (Ct. App. 1997). If "the language used in a restrictive covenant is unambiguous, there is no room for construction and the language *must be enforced in accordance with its plain meaning*." Heape v. Broxton, 360 S.E.2d 157, 158 (S.C. Ct. App. 1987) (emphasis added). After all, a fundamental aspect of contract and property law is that the intention of the grantor must be found within the four corners of the document. Windham v. Riddle, 672 S.E.2d 578, 582–83 (S.C. 2009); Moser v. Gosnell, 513 S.E.2d 123, 126 (S.C. Ct. App. 1999) (stating when a covenant is clear and unambiguous, the court looks only to the language of the covenant and not to extrinsic evidence to determine the intent of the parties). Though the Defendants appear to agree that a restrictive covenant must be interpreted within the four corners,

it has failed to offer a reasonable alternative interpretation that can be made while *staying within* the document. To the contrary, Defendants have offered an explanation that is literally impossible to understand without considering extrinsic evidence. See Def. Summ. J. Mot. at 13.

II. Because the restrictive covenant located on the Plat runs with the land and was referenced in the quiet title decree, the quiet title action did not extinguish the restrictive covenant.

To enforce a restrictive covenant, "a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication." Buffington v. T.O.E. Enters., 383 S.C. 388, 392 (2009). Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270 (1987) ("A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant."). "Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." Queen's, 368 S.C. at 361; see also Bomar v. Echols, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978) (explaining restrictive covenants arising by implication and stating, "where the owner of a tract of land subdivides it and sells the distinct parcels thereto to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement, such restrictions may be enforced by any grantee against any other grantee").[3] While restrictive covenants can be extinguished in a quiet title action, the party seeking its removal must provide affirmative evidence. See S.C. Code Ann. §§ 15-67-10 to 15-67-100 (Law. Co-op. 1976 & Supp. 1991); Dunlap v. Beaty, 239 S.C. 196, 210 (1961) (requiring strong evidence to extinguish covenant).[4]

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[3] Addressed in the preceding section, there are no 'magical words' required to create a restrictive covenant. SPUR, 415 S.C. at 84. But, passing reference to a restriction that does not otherwise exist will not create it. See discussion supra Part I.A.

[4] The land use restriction in question was not raised or litigated in the quiet title action. See Compl. No. 07-CP-10-1185, 2007 WL 5769797 (S.C. Com. Pl.). Additionally, the Court of Appeals, in an unpublished opinion, held that Section 15-67-70—which bars future adverse claims—only applies to *adverse* claims. See Island Preservation Co. v.

As discussed above, "where a deed described land as is shown as a certain plat, such becomes a part of the deed." Id. at 232. Defendants again fail to offer any case law supporting the idea that a recorded plat containing a restrictive covenant, thereby referenced in the deed, does not establish a restrictive use. See Def. Summ. J. Mot. at 14. Defendants' brief, however, relies on Charping v. J.P. Scurry & Co., Inc., which has materially different facts to the case at hand. 296 S.C. 312, 372 S.E.2d 120 (Ct. App. 1988). In Charping, a separate document, not mentioned by the deed at all, was alleged to modify a restriction on the property. Id. at 313. Reviewing the alleged restrictive covenant in question, the court held that the restriction was invalid as there was no way to tell what property the agreement even referred to. Id. ("[T]he deed to Charping made no reference to the restriction."). There is no question, and no one is disputing, that a document intending to restrict property use must, in some way, be related to said property.

Unlike Charping, Murrells Inlet v. Ward, 378 S.C. 225 (Ct. App. 2008), more accurately demonstrates the significance of restrictive language located on a plat description—*referenced by the deed*. 378 S.C. 225 (Ct. App. 2008). In Murrells, an easement was created when the owner (Ward) subdivided a large tract of land in an effort to allow her children to live and enjoy the property. Id. at 228. Though Ward admitted she provided the fifty foot right-of-way road access pursuant to Horry County Zoning and Planning Regulations, she argued that the surveyor erroneously included the easement in the plat, and that she never intended for this use. Id. First, the Court of Appeals stated the general rules regarding restricting land use, focusing on the extensive case law supporting the view that a plat mentioned in a deed, *is part of the deed*. Id. at

South Carolina, WL 10080179 (Ct. App. July 19, 2010). Here, not only did the quiet title action fail to ask for the restrictive use provision to be extinguished, but Plaintiff's predecessor-in-interest was not even an *adverse* party. Further still, the restrictive covenant existed *between* the Plaintiff in the lawsuit—as opposed to existing between plaintiff-defendant or some third party—therefore, there was no need for the judge or the parties to mention it with regards to the quiet title action.

232-33 (emphasis added). More specifically, the court said an "easement referenced in the plat is dedicated to the use of the owners of the lots, their successors in title, and to the public in general." Id. at 233. Further still, "[a]s to the grantor, who conveyed the property with reference to the plat, and the grantee and his successors, the dedication of the easement is complete at the time the conveyance is made." Id.

Turning to the facts at issue in Murrells, the Court of Appeals explained that "when Ward subdivided the property and recorded a plat referencing a fifty foot right-of-way, it may be inferred that she intended the right-of-way to be a private easement dedicated to the use of the lot owners, their successors in title, and the public." Id. at 236. Furthermore, "[b]y recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision." Id. Importantly, the Court of Appeals emphasized that "[s]ubsequent purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property." Id. Thus, regardless of what she "now argues were her intentions at the time the plat was recorded," it would be unfair to deny a subsequent purchaser the right to use the easement since it "relied on the recorded plat when it purchased [the lot]" and since the "dedication of the private easement was complete when Ward originally conveyed the lot." Id.

This brief, along with South Carolina precedent—specifically Defoe, Marshall, and Murrells—have thoroughly discussed the protection for a restrictive use provision located on a plat, which is referenced by a deed. Based on the foregoing analysis, Defendants should not be permitted to introduce an affidavit of Mr. Quinn, or any other extrinsic evidence, in an effort to explain, contradict, elaborate upon, or otherwise controvert the ordinary, plain, and unambiguous language contained on the Plat in this case.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court issue an Order denying Defendants' Motion for Summary Judgment and awarding such other and further relief as this Court deems just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

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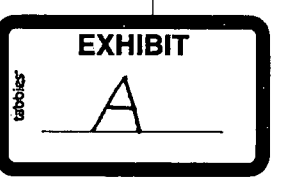
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
September 20, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
	CASE NO: 2016-CP-10-1560
CARPENTER BRASELTON, LLC,)	
)	
PLAINTIFFS,)	
)	
-VS-)	DEPOSITION OF:
)	EDWARD LEE TERRY
ASHLEY ROBERTS, JEREMY)	
COOK, SALAHEDDINE)	
EZZAOUDI,)	
)	
DEFENDANTS.)	

Given before Annie Holbrook, Court Reporter and Notary Public, at Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Charleston, South Carolina, on Wednesday, March 22nd 2017, commencing at 10:30 a.m.

Job No. CS2529680



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(Edward Lee Terry, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. KOUTRAKOS:

Q: Mr. Terry. Is that right?

A: Yes.

Q: All right. My name is Jim Koutrakos. I represent Salaheddine Ezzaoudi, Ashley Roberts, and Jeremy Cook in a lawsuit that you filed against them. I'm going to ask you a series of questions today. If for any reason you don't understand a question, please ask me to rephrase it and I'll ask you a better question. Do you understand that?

A: Okay.

Q: If you answer a question, I'm therefore going to assume you understood the question. Is that fair?

A: That is fair.

Q: Okay. The court reporter is taking everything we say down today so I would appreciate if you give verbal responses as opposed to nonverbal responses. For example, if you nod your head, she'll say in the transcript nod your head. So if you mean yes, just please say yes. And if you say uh-huh and I say does that mean a yes, I

don't mean to be rude. I'm just trying to clarify the transcript. Do you understand?

A: Good.

Q: Are you on any medications that affect your memory or ability to tell the truth?

A: No.

Q: Are you suffering under any physical or mental condition that affects your memory or ability to tell the truth?

A: No.

Q: You are capable of giving truthful testimony today?

A: Yes.

Q: All right. If you need any breaks throughout this deposition, please let me know and we'll go ahead and take a break.

A: All right.

Q: Under the South Carolina Rules of Civil Procedure, I'm required to instruct you that if you have any clarifications, if you need any clarifications, definitions, or explanations of any words or questions that I ask you, that you are to ask me as opposed to your attorney. Do you understand that?

A: Yes.

Q: If and when we do take a break today, it's probably a good idea not to discuss this deposition because I could later ask you questions about that. Do you understand that?

A: I do.

Q: Okay. Can you give me your full name, please?

A: Edward Lee Terry.

Q: Okay. And Mr. Terry, where do you reside?

A: I reside at Fernandina Beach, Florida.

Q: What's the address?

A: 2 Foxtail Road.

Q: Can you say that again?

A: The number 2.

Q: Okay.

A: And then Foxtail Road, Amelia Island, Florida, actually is the taxable address.

Q: And that's right outside of Jacksonville sort of?

A: Yes.

Q: Okay. What's your date of birth?

A: What?

Q: Your date of birth?

A: June 26th, 1945.

Q: Okay. And where were you born?

A: Decatur, Alabama.

Q: Okay. Do you have a business address?

A: No.
Q: Did you go to college?
A: Yes.
Q: Okay. Where did you go to college?
A: University of Alabama.
Q: You guys couldn't hold on for one more second.
A: Okay.
Q: I'm just joking. It was a football joke.
A: I like football.
Q: Yeah. Well, everybody from Alabama apparently does. Right?
A: Right.
Q: Are you employed by anybody?
A: No. I'm retired.
Q: Okay. How long have you been retired?
A: Eight years.
Q: Okay. And where did you retire from?
A: I retired from Atlanta, Georgia.
Q: Okay. What were you doing in Atlanta, Georgia?
A: I had a mortgage company.
Q: Okay. What was the name of the mortgage company?
A: Sunshine mortgage corporation.
Q: Okay. And when you say you had a mortgage company, is that something you owned?
A: Yes.

Q: Okay. How many employees did Sunshine Mortgage Company have?
A: About 250.
Q: Okay. Is it still in existence?
A: No.
Q: Did it close down?
A: Yes.
Q: So you said that would have been six years ago you retired?
A: Eight years.
Q: Eight years ago. Okay. So, 2009?
A: Yes.
Q: Okay. What did you do at Sunshine Mortgage?
A: I was the CEO.
Q: Okay. And how long were you the CEO at Sunshine Mortgage?
A: For 25 years. I started this company.
Q: Okay. Prior to working at Sunshine Mortgage, what did you do?
A: I worked for IDS Mortgage Corporation.
Q: IDS?
A: Yes.
Q: And where was IDS located?
A: Atlanta, Georgia.
Q: How long did you work there?

A: Two years.
Q: Okay. Before that, what did you do?
A: US Navy.
Q: Okay. How long were you in the navy?
A: Three years.
Q: Prior to the navy?
A: College.
Q: College. There you go. Nice and easy. With respect to your mortgage company, this was consumer loans?
A: Mortgage loans.
Q: Consumer mortgage loans.
A: Residential mortgage loans.
Q: Okay. And was it specifically only in Georgia or was it in other states as well?
A: No, it was in surrounding states.
Q: So, it was in the southeast?
A: Yes.
Q: What was the volume of your business? I know in 2008, it probably went down.
A: Well, it varied. It started out small and at peak probably doing one and a half billion a year.
Q: One and a half billion a year?
A: Yeah.

Q: Okay. When you first started out, when you started Sunshine Mortgage, I assume you were a small operation?

A: Yes.

Q: And you were probably involved in a day to day activities more than when you were CEO?

A: Yes. Correct.

Q: Okay. What did you study at University of Alabama?

A: Business and finance.

Q: Okay. Did you have any post-graduate education?

A: No.

Q: I assume you are a licensed real estate broker?

A: At one time.

Q: Okay. I really meant to ask you if you were a licensed mortgage broker.

A: Well, my company was.

Q: Your company was. Okay.

A: Yeah.

Q: You didn't individually hold a mortgage brokerage license?

A: No. When it started it was -- the company was not individual. I think it's individual now.

Q: Okay. So, you did have a real estate brokerage license at one point?

A: Yes.
Q: And how long did you hold that license?
A: A long time. Over 25 years. I don't remember exactly.
Q: And in order to get your broker's license, you would have to take classes. Is that correct?
A: Correct. Yes.
Q: And were you a licensed real estate broker in more than one state?
A: Yes. At one time.
Q: Okay. Which states?
A: Georgia and Wyoming.
Q: Okay. Is it fair to say that personally, you, Mr. Terry, are pretty knowledgeable about the real estate transaction process in general?
A: Yes.
Q: For example, you know how to read a HUD statement? You're not going to be confused by a HUD statement. Is that correct?
A: Hopefully not. It depends on who prepares it.
Q: Right. Fair enough. You know how to read a deed?
A: I do.
Q: You've reviewed plats before?
A: I have.

Q: You've hired surveyors before?
A: I have.
Q: You've reviewed title insurance commitments?
A: Well, I don't consider myself qualified.
Q: Okay.
A: Certainly, I'm not an attorney. Let's leave it at that.
Q: Okay. But if I handed you a title insurance commitment, would you understand how to read it?
A: Generally.
Q: Generally. Okay.
A: Depending on the complications to it.
Q: Sure. You also, besides having a mortgage brokerage business, you're involved in real estate development?
A: Yes.
Q: Okay. Tell me about that.
A: Well, developing subdivisions.
Q: Okay. In which states?
A: Multiple states.
Q: Including South Carolina?
A: Yes.
Q: Okay. Georgia?
A: Yes.
Q: Florida?

A: Yes.
Q: Any other states besides those?
A: North Carolina. That's pretty much it.
Q: Okay. And when you were developing subdivisions, were you operating under a specific company?
A: No. You typically set up an LLC development.
Q: Okay. Was there a parent LLC?
A: Not really.
Q: It would be you?
A: Yeah.
Q: Did you have any co-investors in your real estate developments?
A: Say it again.
Q: Did you have any investors or partners who did developments with you?
A: Well, long ago. But that was in the '80s, though.
Q: So, almost all of these real estate developments, development of subdivisions, you did by yourself? You were the investor?
A: Yes.
Q: It was your money at risk?
A: What?
Q: It was your money at risk?
A: Well, mine or the bank's.

Q: The bank's. Right. Correct. And with respect to South Carolina, how many subdivisions did you develop in South Carolina?

A: I don't remember.

Q: More than 10 or less than 10?

A: Probably more than 10.

Q: Okay. More than 20?

A: Perhaps around that amount.

Q: Around 20. And in fact, you had done subdivisions in this area. Correct?

A: Yes.

Q: And you operated a company called Whipple Development Corporation?

A: That is correct.

Q: And you operated an entity called Brentwood Homes. Right?

A: Correct. Yes.

Q: And did Whipple Development and Brentwood Homes, they did work in different states. Correct?

A: Correct. Yes.

Q: And do you recall doing the Highwoods Development in South Carolina?

A: I did. Yes.

Q: Okay. And generally, in developing subdivisions you would then -- and tell me where I'm going

wrong. You'd locate a piece of property that you think would be suitable for residential subdivision. Correct?

A: Yes.

Q: And then you would study it to see if it was actually feasible to be turned into a residential subdivision. Is that right?

A: Hopefully. Yes.

Q: And then what would be the next step? Would you get a surveyor out there to survey the property? Or would you get an engineer out there to see if it was suitable for a subdivision?

A: Well, it typically runs parallel to each other; the two professionals.

Q: Okay. And then eventually, a point in time there would be a subdivision plat. Is that correct?

A: Say it again.

Q: A subdivision plat or survey?

A: They would prepare that. Yes.

Q: You would review it. Wouldn't you?

A: Yes.

Q: Okay. And then the subdivision plat would be approved by the local governing authorities. Correct?

A: It would be approved. But again, they would

approve it generally with conditions.

Q: Conditions. Right. And sometimes you'd have to bond off a plat. Is that right?

A: If you choose to.

Q: If you choose to. Okay. And what would you choose to bond off a plat?

A: Well, that would depend on each individual situation. There's not a checklist for that.

Q: Okay. No problem. I don't want to get bogged down in bonding off plats. And so, in your typical subdivision development, you'd have a subdivision plat that's recorded. The county would have certain requirements and they might note that on the plat. Correct?

A: They generally do conditions on a plat or it might be an addendum to it.

Q: Okay. And then the plat's recorded usually with wherever you would record real estate records in that particular county. For example, Charleston has the RMC. Other counties have the register of deeds. Is that your understanding?

A: That is my understanding.

Q: And then -- and you correct me if I'm wrong -- you would then record, usually, a covenants and restrictions. Correct?

A: Well, that depends. That's each developer's choice. You can have restrictions on a subdivision or not restrictions.

Q: Okay. Did you choose to restrict your subdivisions?

A: I generally would restrict a subdivision.

Q: Okay. And who would prepare those restrictions for you?

A: Well, if I was a developer, it would be done in conjunction with the engineers involved and also engage in a real estate attorney to perhaps review the restrictions.

Q: Right.

A: But again, it depends on the complexity of it.

Q: Right. But you said you were the developer in these subdivisions. Correct?

A: The ones I did, yes.

Q: The ones you did. Right. And developing those subdivisions you would have hired an attorney to prepare the kind of restrictions you would have wanted in that particular subdivision. Correct?

A: Well, depending on the complexity. With a simple restriction, it might just be recorded on the plat.

Q: Okay. How so?

A: Huh?
Q: How so?
A: I didn't understand.
Q: I said how so? How would they be recorded on the plat?
A: Well, you can record minimum lot sizes. You can record send backs. I've seen it done in both on the plat and also on an addendum; a separate written declaration.
Q: All right. In your subdivisions, for example, in Highwoods development, you would have done an extensive multi-page set of restrictions on that subdivision. Correct?
A: I don't recall.
Q: Okay. Who would recall? Would Iris Whitaker recall? Because she signed those restrictions on behalf of your company in Highwood development. Would she recall?
A: Iris Whitaker was an employee and I don't recall that she had but I'll take your word for it.
Q: Right. You've seen your development's multi-page sometimes 25, 30 page restrictions on subdivisions that you develop. Correct?
MR. ROSEN: Object to the form.
A: I've seen them. Yes.

Q: Right. So, it's fair to say that subdivisions that you developed or your company's developed that you had recorded extensive covenants and restrictions drafted by an attorney or signed by somebody with authority to sign on behalf of one of your corporations?

A: Well, that may be or it may be a restriction recorded on the plat itself.

Q: All right. Have you ever done a subdivision where you've simply noted restrictions on the plat but you didn't do a separate set of covenants and restrictions?

A: I don't recall. Again, I've told you I've done numerous subdivisions in multiple states so I don't recall issues related to that minutia.

Q: Okay. How big of a development was Highwoods development?

A: I don't recall.

Q: Okay. But if you had a residential subdivision where you're selling lots between $35,000 to $100,000, do you believe that you would have a cause to have been recorded separate covenants and restrictions on the property, a multi-page document called covenants and restrictions?

A: Again, two ways.

Q: Yeah.

A: On the plat or in an addendum.

Q: Okay. Do you recall any specific property where you chose to only note restrictions on a plat?

A: Again, multiple states plus 25 years. I don't recall exactly doing it or not doing it.

Q: Okay. Would those, in cases where you remembered there would be some kind of restriction noted on a plat, would those restrictions also have been duplicative or identical to restrictions that would have been mentioned and separately recorded covenants and restrictions?

A: I don't know.

Q: Where is Iris Whitaker today? Does she live in Charleston?

A: I don't know.

Q: Okay. Who would have done your legal work in South Carolina for preparing things like covenants and restrictions?

A: Again, multiple years, I'm sure multiple legal advisors.

Q: Would there have been somebody who would have -- for example, the Highwoods development -- would you have been the one to contact the attorney to prepare the restrictions or would it have been

somebody else here in South Carolina that would have been doing that for you?

A: I don't recall.

Q: Okay. An attorney would generally prepare covenants and restrictions. Correct? You wouldn't draft them yourself?

A: No. I would rarely draft them. If it was regarding simple ones to be done on a plat, then I would probably consult with an engineer and save the legal fees.

Q: Yeah. I find it amazing that real estate developers with millions of dollars would say just coincidently that you're doing restrictions on a plat. Because that's the right way. There's a right way and there's a wrong way and for some reason --

A: The subject matter we're here today -- that is how it was done.

Q: Okay. Let me go off the record.

WHEREUPON AN OFF THE RECORD DISCUSSION TOOK PLACE.

Q: When you said you restricted property by notations on the plat, who would sign the plat?

A: I can't. I don't know what plat. Show it to me, I'll tell you who signed it.

Q: Well, I'm saying generally, you talked about two

ways to restrict the property. One way is to do a separate covenants and restrictions. Correct?

A: That's what I said.

Q: And the other way, according to you, was to put notations on a plat.

A: Like the way that brought us to this meeting today. That I'm not aware of anything other than the restrictions on the plat.

Q: Okay. But according to you, there's two ways that you would have done it as a real estate developer. One, is do separate covenants and restrictions. Another way, to do restrictions on a plat. Correct?

A: Correct. But I also, like when I -- I didn't develop the subdivision.

Q: Yeah. I'm just talking about how you would have done it just for the moment. So, you would have either had a separate set of covenants or you would have done something on a plat. Correct?

A: That is correct.

Q: Okay. On a separate covenants and restrictions, they would have need to have been signed by the owner of the property subjecting the property to the restrictions. Would you agree?

A: Not necessarily. Again, a corporation; it might

be an officer.

Q: That's what I'm saying.

A: You said an owner.

Q: Yeah. So, if ABC Corporation owns the property, somebody on behalf of ABC Corporation would have to sign the covenants and restrictions. Correct?

A: That would be my understanding.

Q: Right.

A: I'm not an attorney in South Carolina but that would be my understanding.

Q: Right. And so, with respect to the notations on the plat, who would sign that?

A: I don't know. Again, I guess it depends on state by state. And I'm not qualified to say for South Carolina.

Q: Okay. Have you ever been deposed before like we're doing today?

A: I have.

Q: Okay. How many times?

A: I don't recall. I'm 71 years old. I don't recall.

Q: Okay. Is it more than 10 or less than 10?

A: Probably more than 10.

Q: Okay. And you've been party to a lawsuit before. Correct?

A: I have.
Q: Numerous lawsuits.
A: What?
Q: Numerous lawsuits?
A: More than I wish.
Q: And you've testified in court before, too?
A: A few times.
Q: Okay. Have you ever been arrested before?
A: No.
Q: Okay. I'm showing you what's marked as Exhibit number 1.
DEFENDANT'S EXHIBIT 1 MARKED FOR IDENTIFICATION.
Q: Exhibit number 1. This is a notice of 30(b)(6) deposition. Have you seen this before?
A: Have I seen this before, John?
MR. ROSEN: Yes, you have.
A: Okay. Yes, I have.
Q: Okay. Have you reviewed the 17 items?
A: Well, no. Let's review them.
MR. ROSEN: Actually, you know, I don't know if he has seen this. I think you have. We forwarded it to you. Yeah, I've seen this.
A: I've seen this. Okay.
Q: And normally, the witness answers the questions, not the lawyer.

A: The complaint, I assume that's the property that's the subject matter in this --

Q: You don't have to read it into the record. I'm just asking if you've read the 17 items before.

A: Well, again, let's just go through it.

Q: You can go through it. Just read it to yourself if you don't mind.

A: Okay.

Q: Have you reviewed those 17 items?

A: I just reviewed them. Yes.

Q: Okay. Can you provide testimony or are you knowledgeable about each of those 17 items?

A: On the interrogatories, the responses were prepared by counsel, so I have to rely on their advice in responding to that.

Q: So, the answer is no, you can't give testimony as to item number 2?

A: I'm saying, I have to rely on counsel to discuss the responses with me because that's very legal in nature. And I'm not a South Carolina lawyer. All facts and circumstances related to the 1990 plat. I wouldn't be aware of all the facts and circumstances of something that happened 27 years ago.

Q: Right. Whatever you're aware of. That's fine.

A: Huh?
Q: I just want to know of whatever knowledge you have of that.
A: That's all I could do. I have no idea. I wasn't there.
Q: Okay.
A: Number 11, I haven't checked that out.
Q: So, you can't tell --
A: So again, that's -- I don't need water or sewer for agricultural use.
Q: Okay. So, for 11, you can't provide testimony as to 11?
A: Correct.
Q: Okay.
A: I can go research it and we can do this another day. 15; I couldn't make a statement. I'm not qualified to say what the fair market value a plaintiff's property is. 16; was a four year request made to the plaintiff to Charleston County?
MR. ROSEN: I can't answer that right now. Sorry.
A: Okay. And 17; plaintiff's lawyer I'm sure has had communications with the defendant's representatives.

Q: Can you testify about 17, any communications you may have had with any of the defendants or anybody that the company's had?

A: And again, "Or its agents and representatives." He's my representative. So, I'm not aware of all the conversations.

Q: Okay. We'll go through that in a minute. Today's deposition, I'm taking the deposition of Carpenter Braselton, LLC. Do you realize that?

A: Yes.

Q: And you are the designee of Carpenter Braselton.

A: I'm the authorized agent.

Q: Right. Well, for the purposes of today's deposition, Carpenter Braselton, LLC has designated you to testify on its behalf. Do you understand that?

A: I understand that.

Q: Okay. What is your position with Carpenter Braselton, LLC?

A: I am the authorized agent. It's owned by my wife, Elaine Terry.

Q: It's a limited liability company. Correct?

A: Yes.

Q: And is she the manager of the company?

A: Yes.

Q: Is she also the sole member?
A: Yes.
Q: You're not a member of the company?
A: Not at all.
Q: What other property does Carpenter Braselton, LLC own?
A: It owns a piece of property adjacent to this property.
Q: And we'll talk about that in a minute. Any other property other than those two parcels?
A: Not that I'm aware of.
Q: What did you do today to prepare for this deposition? What did you do in general to prepare for this deposition besides show up?
A: I showed up and reviewed a file in my computer.
Q: Okay. And you have a file on your computer. What would that be? What documents did you review?
A: The complaint and then I believe some answers.
Q: Okay. Anything else besides those two documents?
A: That's all I can recall.
Q: In this case, we sent requests for production. By the way, do you have any legal training?
A: No. Business law at the University of Alabama.
Q: Okay.

A: Rather limited.

Q: Okay. During the course of this litigation, we sent requests for production; asked for various documents to be produced. From this point forward, unless I qualify it, when I'm saying "the company" or "Carpenter Braselton", I'm referring to Carpenter Braselton. But if I throw a "you" in there, I'm also referring to Carpenter Braselton. Do you understand that?

A: Just Carpenter Braselton.

Q: Carpenter Braselton. Right. Do you know what the company did to review its files to find documents that would have been relevant to this case?

A: Well, the closing of the transaction, the purchase, the documents related thereto.

Q: Okay. And you provided them to your lawyer?

A: And I think we got the closing attorney, which was Larry Dodds across the river. He provided his file, I believe. And that would be the documents primarily related to this complaint.

Q: Okay. And the company would not have any more documents other than documents that would have been in Mr. Dodd's closing file?

A: The critical documents, the plats and the

restrictions that's been placed on the plat.

Q: Okay. Why was Carpenter Braselton organized? Why was it organized? What was the purpose of setting up Carpenter Braselton, LLC?

A: Well, to hold assets is the only answer I know; the simple answer.

Q: It's a single purpose entity for the purpose of holding title to real property?

A: Single purpose for holding --

Q: Title.

A: -- title to real property, assets. Let me get some water.

Q: Okay. Does the company have any employees?

A: No.

Q: The two pieces of property that it owns would be Lot C5. Correct?

A: The subject matter of this complaint.

Q: Correct.

A: Yes.

Q: And 2284 Lucky Road. Correct?

A: I believe that's the address of the adjoining property.

Q: And that's the adjoining property. Right?

A: Yes.

Q: Okay. Tell me about Lucky Road. How did the

company become interested in buying the Lucky Road property?

A: The adjacent property?

Q: The adjacent property. Yes.

A: A real estate broker contacted Carpenter Braselton about the purchase and I think it coordinated the arrangements for it.

Q: Well, let me back up a little bit. You, Mr. Terry, you're a resident of Florida. Correct?

A: Correct. Yes.

Q: Do you have a house here in Charleston?

A: I don't.

Q: Does your wife?

A: She does. Yes.

Q: Okay.

A: Through another LLC.

Q: Does she live in Charleston?

A: No. She lives in Florida.

Q: Okay. Is the property that she owns through another LLC in Charleston, is that a residence, a second home?

A: Yes. Second home, basically.

Q: So, basically, your wife has a second home through an LLC in Charleston, South Carolina?

A: That is correct. Yes.

Q: But it's not Carpenter Braselton, LLC.
A: That is correct.
Q: Why does she own it individually?
A: I don't know. Ask her.
Q: Okay. So, it's not like this real estate broker found you in Florida. He knew about you because you spend some time here with your wife.
A: Yeah. My grandkids are here.
Q: And your grandkids are here. You have children here.
A: Yeah.
Q: Okay. I was just trying to find out about your connection in Charleston. So, you have a second home here and you have children here.
A: Yeah.
Q: So, you're here a lot.
A: Well, we come to visit the grandkids. Yes.
Q: Right. Do you have any other -- and this is a question I'm asking of you, Mr. Terry. Do you own any other investment property through an LLC in Charleston, South Carolina?
A: No.
Q: Okay. How about anywhere else in South Carolina?
A: No.
Q: Okay. Are you involved anymore in any real

estate development activity in South Carolina?

A: No.

Q: Going back to Lucky Road. And I'm asking questions of the company. Okay? I just had a little tangent there. Who is the agent who contacted you?

A: Huh?

Q: The agent who contacted you.

A: Dan Mengedoht.

Q: Okay. And what did he tell you? How did he introduce you to the property?

A: I don't remember. He gave me information. I don't recall exactly what all the information was but he was a knowledgeable expert.

Q: Okay. Do you recall when Carpenter Braselton, LLC purchased the adjoining property?

A: I don't recall.

Q: All right.

DEFENDANT'S EXHIBIT 2 MARKED FOR IDENTIFICATION.

Q: I'm showing you what has been marked as Exhibit 2. It says, "Master's Deed" on top. Do you see that?

A: I see that.

Q: Do you see where it looks like the Master in Equity conveyed to Carpenter Braselton, LLC

certain property? Do you see that?

A: I see page one. Is that what you're talking about?

Q: Well, really, the property is going to be described on the second to the last page of Exhibit number 2.

A: Okay.

Q: It's the third to the last page, Exhibit A.

A: I see Exhibit A. Yes.

Q: And it's 5.53 acres.

A: Okay.

Q: And it's tax map number 341-00-00-028. Do you see that?

A: I see that. Yes.

Q: Would that be the adjoining property; the Lucky Road property?

A: I believe so.

Q: Okay. Flip back one page before that, if you would. You would see where the master signed the deed May 8th, 2013.

A: I see that.

Q: Does that refresh your recollection of when you purchased the property?

A: Well, it certainly appears to be right around that time.

Q: And if you look at the last page -- I think you have one more page after that, sir.

A: I just got to the Affidavit, the last page.

Q: I don't think that's the last page. I think there's one page after that.

A: Okay.

Q: There should be, at least. There you go. On the top right where it says "Recorded".

A: Yeah.

Q: Recorded June 18, 2013.

A: I see that. Yes.

Q: Okay. So, you would have purchased this property between May and June of 2013. Correct?

A: Yeah.

Q: You, being Carpenter Braselton.

A: Correct. Yes. I see that.

Q: And the first page it shows that you purchased the property for $111,600. Correct?

A: Okay. Let's go back and check. Yeah. That's right. I see that.

Q: Okay. And the first whereas clause of Exhibit number 2 talks about a lawsuit between Earline Nelson and Clyde Hamilton. Do you know anything about that?

A: I don't.

Q: Did you understand when you purchased the property that it was being sold as a result of some type of lawsuit?

A: Yeah. I remember Dan telling us about that.

Q: What did he tell you about that?

A: Well, again, he said it was being sold through the court and if you like it, make an offer. So, I talked to my wife about it and she agreed to make an offer.

Q: Okay. And what was the goal in purchasing the property?

A: Well, I think she basically wanted to hold it and make a pasture out of it and a barn.

Q: Why would she want to make a pasture out of it and a barn?

A: Ask her. Again, I guess she wanted a place for her grandkids.

Q: Okay. What type of improvements are located on the Lucky Road property; the adjoining property?

A: There is a barn and a pasture has been planted.

Q: Pasture of what? You're planting something?

A: Pasture grass. Yeah.

Q: Okay. All right. How many square feet is the barn?

A: I think it was one of the questions on the

discovery. Don't hold me to this but probably about 40 by 70.

Q: Okay. How many floors?

A: Two.

Q: What's on the first floor?

A: Stables and storage areas.

Q: You all keep horses there?

A: Not yet.

Q: What do you store there?

A: Well, right now, odds and ends are being stored there. Like I said, it's built to be a horse barn.

Q: Okay. Tell me about the second floor. What's on the second floor?

A: It's a small office apartment.

Q: Okay. It's a residence on the second floor?

A: Right.

Q: How many bedrooms?

A: Two.

Q: How many baths?

A: One.

Q: How much did it cost to construct the improvement on the Lucky Road property?

A: I don't recall.

Q: Was it over $100,000?

A: Probably in that range. But again, I don't recall.

Q: Okay. Does anybody live there?

A: No, not permanently.

Q: Okay. There are people who spend the night there. Correct?

A: Right. Yes.

Q: And who would that be?

A: Well, I have. My wife has. My son has. My grandkids have. Just all family.

Q: Family? Family has?

A: Family. Yes.

Q: Okay. Do you know if that property's connected to public sewer or do you have a septic tank?

A: Well, the barn's got a septic tank. There's a caretaker that lives up at the other end in a trailer and I believe that's connected to public sewer.

Q: But you don't recall that home, that structure on the Lucky Road property, you don't recall whether that's connected to public sewer?

A: Which one now?

Q: The Lucky Road; the barn.

A: The barn. No, I know that's not connected to public sewer.

Q: Okay. How about public water? Do you have public water?

A: No.

Q: You have a well?

A: Correct.

Q: Okay.

A: I told you also, to answer your question correctly about the other end of the property, there's a trailer.

Q: Okay. So, the property has a barn and there's also a trailer on it?

A: Right.

Q: Okay. Who lives in the trailer?

A: I know that he works for a friend of mine and he introduced me to him and he wanted a place to live and my wife and I discussed it and so she bought a trailer and put it on there for him.

Q: Okay. What's his name?

A: His name is Jack.

Q: What's Jack's last name?

A: I can't recall.

Q: Okay. And he lives there full time in the trailer?

A: Right. Yeah.

Q: And you mentioned the word "caretaker" before.

Is that to whom you were referring?

A: Right. Yeah.

Q: And does he keep an eye on the house, the barn, when you guys aren't there?

A: Correct. Yeah. That's part of his responsibility. Yeah.

Q: Who on behalf of Carpenter Braselton visited the property prior to its purchase?

A: I think my wife and I did.

Q: Okay. And how many times did you visit the property?

A: I don't recall. If you notice the date, is goes back to '13, so I don't recall.

Q: Okay. Do you think it was more than once or just once?

A: Again, I can't answer that.

Q: Do you recall when visiting the property that you saw any other improvements or structures in the general vicinity?

A: Again, on that property, I know there was no improvements on --

Q: Yeah. I'm talking about adjoining property.

A: Yeah. There was a house next to it.

Q: Okay. What's the closest house to Lucky Road property?

A: Well, I know there's a house right over there right next to Jack's trailer.

Q: Okay.

A: That's a house.

Q: How about on Roper Road? Is there a house there on Roper Road?

A: There's a house on Roper Road. Yeah.

Q: And it was there when --

A: It's not on Lucky Road though.

Q: Right. It's on Roper Road. Right?

A: Yeah.

Q: And it's right next to your property?

A: Yeah. Well, next to this.

Q: Yeah. The adjoining property. Correct?

A: Yeah. This deed right here. Yeah.

Q: Right. How do you access the Lucky Road property?

A: Lucky Road.

Q: Okay. Did you review any maps or surveys prior to purchasing the Lucky Road property or did anybody associated with Carpenter Braselton review it?

A: I don't recall there being a survey of the property. I know it's on the tax plat. And we looked at the tax plat.

DEFENDANT'S EXHIBIT 3 MARKED FOR IDENTIFICATION.

Q: I'm showing you what's been marked as Defendant's Exhibit number 3. Have you seen this before?

A: I don't recall. I may have. It appears to be the Lucky Road property, what we're calling; where the barn is.

Q: Okay. So, the Lucky Road property is 5.53 acres. Correct?

A: That's what it says. Yes.

Q: Right. And where would Lucky Road be? Could you just show me where Lucky Road is? I think I may have kind of missed it on the plat.

A: Are you looking at this?

Q: Yeah, I am.

A: Okay. Where it says, "Existing house property of Hattie Simmons".

Q: Yes, sir.

A: And Lucky Road kind of just bumps right into that.

Q: Okay.

A: And then you see it says it's 2,508 feet to intersection of Bradham and Riverland --

Q: Yes, sir.

A: So that's Lucky Road, the 2,500 feet.

Q: Okay. So, Lucky Road hits, if you will, for lack

of a bed word, the eastern edge of the 5.53 acre tract?

A: Yeah. Actually, it kind of curves around and hits that corner right there where it says, "Existing house".

Q: Okay. When you go to visit the Lucky Road property, you take Lucky Road. You don't take Roper Road. Correct?

A: Correct. Access is not -- you can't get to this property very well through the Roper Road --

Q: Roper Road. Fair enough.

A: -- because there's a bank that kind of drops off.

Q: Okay. Prior to purchasing this property, do you recall reviewing all of these notations that are on Exhibit number 3?

A: I don't recall.

Q: You don't recall? Okay.

A: I likely did if it represents it in the title work and all. But again, I don't recall specifically reviewing that.

Q: Do you see underneath where it says, "The property of Hercules Mathews"? It says, "This lot does meet minimum health department standards for a modified conventional sub surface disposable system only"? Do you see that?

A: Which note is that?
Q: I'll show you. Right there. That note right there.
A: Okay.
Q: Do you see that?
A: I see that.
Q: Who do you believe caused that notation to be put on Exhibit number 3?
MR. ROSEN: Object to the form.
A: I don't know. This thing was done 15 years ago. I wasn't there.
Q: Okay. Do you understand that being a real estate developer who's developed a lot of real estate subdivisions, do you believe that would have been something that would have been caused to be put on the plat by the local governing authority?
MR. ROSEN: Object to the form.
A: I don't know who caused it.
Q: Okay. I didn't ask you if you knew him. Do you believe that more likely than not --
A: Again, I wasn't there 15 years ago. I don't know who caused it.
Q: Okay. You've paid surveyors before, haven't you, in your capacity --
A: I have.

Q: -- of doing other real estate developments. Correct?

A: I have.

Q: And would that be something you would cause to be put on a survey language like that or similar to that?

A: I don't know who caused it.

Q: I didn't ask you that.

A: I do not know. It could be multiple people.

Q: Okay. And do you see where there's approval stamped? You see where this plat was approved by Charleston County; the Charleston County Planning Commission?

A: Okay. Yeah. I see that. Yes.

Q: Okay.

A: And again, that was 15 years ago.

Q: Right. But you bought the property four years ago.

A: Four years ago. Yeah.

Q: Right. But again, you don't recall reviewing this? You have no specific recollection --

A: I don't know. I may have. I may not. Again, I don't recall all of the minutia from four years ago.

Q: You kind of do the same thing I do. I like to

talk over people. It's a bad habit that I have. And that's the way people normally talk and it's probably from my heritage that I like to talk over people. But it makes her life very difficult and it makes our life difficult for whoever's reading this transcript later on. I'll try my best if you could try your best, too.

A: I'll try my best.

Q: Thank you, sir.

DEFENDANT'S EXHIBIT 4 MARKED FOR IDENTIFICATION.

Q: I'm showing you what is marked as Exhibit number 4. There you go. And let's go ahead and mark Exhibit number 5.

DEFENDANT'S EXHIBIT 5 MARKED FOR IDENTIFICATION.

Q: Let's look at Exhibit number 4. The structure in the center of the picture, many, many feet behind that utility pole, that is the structure you caused to be constructed on the Lucky Road property. Is that correct?

A: That is correct.

Q: And the structure on the left, who's structure is that? Is that my client's house?

A: It's who's house?

Q: This right here. Do you know whose house that is?

A: I'm really not sure. It may be the Roberts' house but I'm not totally sure.

Q: Ashley Roberts?

A: Yeah. I'm not totally sure on that.

Q: There's no other house in the area. Do you believe it's any other?

A: That's what I'm saying. It may be hers.

Q: Okay.

A: And then Jack's trailer. That's up here to the right.

Q: Okay. Do you believe this picture to be a true and accurate representation of your house from that particular angle?

A: A true of what now?

Q: True and accurate.

A: Of what?

Q: Of your house.

A: Of the barn?

Q: Yeah.

A: Yeah.

Q: Yeah. Exhibit number 5.

A: Same thing. That's the barn.

Q: That's the barn. And who's car is that parked at the barn? Do you know?

A: I don't know.

Q: Okay. There's this little structure to the right right next to the tree. Do you see that in Exhibit number 5?

A: Yeah.

Q: Is that a shed or something?

A: Yeah. It's a pump house.

Q: A pump house. Okay.

A: Yeah.

Q: All right. And this picture appears to have been taken. And we'll talk about Lot C5 in a second. In looking at Exhibit number 5, where is C5 in conjunction with where your house is; Carpenter Braselton's house is on Lucky Road?

A: Well, C5 is right next to it.

Q: Indulge me for a second, sir, because I have not visited your barn. It looks like a great structure. It really does. Is there a door that you can go out of the property on this side?

A: Yeah. You can see it right there.

Q: That's a door right there? Okay.

A: Yeah.

Q: So, if you walk straight out that door and walk, I guess that would be west, you would eventually be standing on Lot C5. Is that right?

A: Yeah. On this thing it doesn't say C5. It says

Herbert Brown who was a seller of the lot that was also known as C5.

Q: Okay. So, if you go back to Exhibit number 3, would the structure be located around the area where it says "Building setback from critical line" or generally in that area? Is it generally right here?

A: Yeah.

Q: Is that generally where the house is?

A: Yeah. It's going to be coming kind of straight across from Herbert Brown which is C5.

Q: Which is your property; the other piece of property that you own.

A: C5?

Q: Yes, sir.

A: Yeah. Yeah.

Q: Okay. Fair. I just wanted to figure out exactly --

A: Yeah. It's adjacent to it.

Q: Thank you. So, eventually, Carpenter Braselton purchased Lot C5. Correct?

A: Correct.

DEFENDANT'S EXHIBIT 6 MARKED FOR IDENTIFICATION.

Q: Exhibit number 6.

A: Can I give these back to you?

Q: No. You hold on to them and then the court reporter's going to take them after we're done.

A: Okay. All right.

Q: Exhibit number 6 is a deed from Herbert Brown to Carpenter Braselton, LLC. Correct?

A: Correct.

Q: And $170,000 is the purchase price. Do you see that?

A: Yes.

Q: And the third page would be Lot C5.

A: Correct.

Q: And the last page, like we did last time, shows that the deed was recorded November 12th, 2014.

A: Okay.

Q: Do you see that?

A: I do.

Q: Okay. So, about a year and a half later, you wind up purchasing Lot C5. A year and a half after you purchased the Lucky Road --

A: Yeah. And again, it goes back to Dan Mengedoht that brought it to me.

Q: He did.

A: Yeah.

Q: Okay. Good real estate agent. Right?

A: Yeah.

Q: Amazing. And I'm glad you mentioned that because I would think that your neighbor came and knocked on your door and said, "Hey, you want to buy my property?" That's not how it happened. Did it? Herbert Brown didn't contact you.

A: No. I've never met Herbert Brown.

Q: Okay. Have you ever talked to Herbert Brown?

A: I don't think so.

Q: So, your interest in Lot C5 came from the real estate agent, Dan?

A: Well, he introduced me to it. Yes.

Q: He introduced it to you. Okay. And what made Carpenter Braselton interested in buying that Lot C5?

A: Well, it's for an expansion of its -- it hopes to be a horse farm.

Q: Okay. Is it Carpenter Braselton's intent to combine, if you will, Lot C5 with the Lucky Road property to be one property, to be a farm?

A: Well, it will always retain its separate legal identity --

Q: I understand that.

A: -- because it's part of a recorded plat with restrictions on it.

Q: I understood --

A: But Carpenter Braselton basically saw it as an expansion of its horse farm and it was ideally restricted because it restricted agriculture use.

Q: Okay. I hadn't asked you that question but thanks for giving the additional information. Good job for preparing for your deposition. So, you don't intend to combine it? Since you're an expert in real estate, I'm sure you've made a pile of money developing real estate --

A: Well, it comes and goes.

Q: It comes and goes. Right. But because you have a lot of experience in real estate development, you aren't intending to combine the two parcels but in reality, practicality, you want to make one your Lucky Road farm, if you will. C5 and --

A: Correct. But basically, honoring the restrictions and so forth which we thought our use would honor it.

Q: Okay. And so, you didn't really need to visit Lot C5 prior to purchasing because you knew where it was; it's right behind your property, the Lucky Road property. Right?

A: Correct. Yeah.

Q: It's not like you have to make a separate visit to go and inspect Lot C5. All you really needed

to do was walk out of the back door of your barn --

A: Walk out the door and walk over to it.

Q: Right. There it is. Did you walk the property prior to purchasing it?

A: Yeah. I remember walking it because it's got a nice stand of pine trees on it, which is always a good sign in this part of the world.

Q: All right. Were you able to tell the boundaries of the property; the corners?

A: I don't think the corners were marked at the time. But you could tell generally where the corners were.

Q: Okay.

A: Within 20 feet.

Q: You didn't have a surveyor go out there and mark the corners for you so you can see?

A: I can't recall on that.

Q: Okay.

A: I don't know.

Q: You didn't have a separate survey done of this particular piece of property. Did you?

A: I do not recall.

Q: If you had one done, you would have provided it to your attorney. We would have it.

A: Yeah. I gave him everything we had in our file.
Q: Right. So, prior to purchasing Lot C5, you knew that there was a house two lots down. Correct? Mrs. Roberts' house?
A: Correct.
Q: And it was there for years. The first time you entered this little area, I assume, was to visit the Lucky Road property for the first time. Correct?
A: I would assume so.
Q: Okay. And the first time you visited the Lucky Road property, Mrs. Roberts' house was already there. Correct?
A: I'll assume so.
Q: Okay.
A: Again, this is a number of years back. So, I don't know.
Q: Okay. But prior to purchasing Lot C5, certainly Mrs. Roberts' house was there. Correct?
A: I guess it was. I wasn't focusing on Mrs. Roberts' house.
Q: Okay. Tell me what due diligence did you perform prior to entering into a contract to purchase Lot C5 and subsequently closing on it.
A: I don't recall any extensive due diligence

because, again, it was right next to the property that I already owned. It was covered in a stand of pine trees. That's always a good sign in the low country. And that was good.

Q: Okay. There was no building to inspect. Right?

A: No. There's no buildings on it. No.

Q: You didn't want to do any environmental testing. Right? That was not necessary. Correct?

A: I did not do any environmental testing. No.

Q: You didn't need a phase I or anything like that?

A: No.

Q: Okay. Somebody on behalf of Carpenter Braselton signed a contract to purchase the property. Correct?

A: Correct. And I don't recall who that was.

Q: Okay. And then somebody at Carpenter Braselton or your real estate agent contacted an attorney to help with the closing. Is that right?

A: Yes.

Q: And do you recall who you all used for that particular closing?

A: What now?

Q: Do you recall who the attorney was for that particular closing to purchase Lot C5?

A: Yeah. I just saw something in here.

Q: Dodds?
A: Larry Dodds.
Q: Larry Dodds. Is that right?
A: Yeah. It's right here.
Q: Yeah. Larry Dodds. It's a stamp on Exhibit number 6 -- which is also the same attorney who helped you with buying the Lucky Road property. Correct?
A: Well, let's look and find out.
Q: It's there; Exhibit number 2.
A: Well, if the stamp's on it, that's fine.
Q: Okay. Did you go down to the county courthouse or did anybody on behalf of Carpenter Braselton besides this attorney go down to the courthouse or go down to Charleston County to review any records?
A: I don't -- well, obviously somebody from, I'm sure, the Dodds' office went down and checked the title and all.
Q: Besides Dodds?
A: No. I mean, I didn't go down. I don't ever go down and check records. I will review documents that's presented to me.
Q: Okay.
A: And there was a plat presented to me.

Q: Okay. When was that plat presented to you?
A: Again, Mengedoht collected everything and sent it to me. I don't know when it was.
Q: Okay. He collected everything and sent it to you. What do you mean by "everything"?
A: Well, the critical thing was the plat showing the boundaries that the lots on that plat and the restrictions that applied to it.
Q: Did you review the plat prior to closing?
A: I'm sure that I did. Now, again, do I recall such and such time reviewing the plat? No.
Q: Okay.
A: This is four years ago or three years ago and all. But I know that I would have looked at the plat because, again, Mengedoht sent it to me.
DEFENDANT'S EXHIBIT 7 MARKED FOR IDENTIFICATION.
Q: This is Exhibit number 7. Have you seen this document before?
A: I have.
Q: Okay. And this is the plat of numerous lots. Correct; including Lot C5?
A: Correct.
Q: And you don't recall whether you've reviewed Exhibit number 7 before closing?
A: I'm sure I did. And also, Dodds told me and in

the title insurance policy that you understand that your property you're buying is restricted agriculture use and I said, "Yeah, that's the reason why I'm buying it. And the other lots are, too."

Q: Okay. So, Dodds told you it was restricted from agricultural use?

A: Yes. It's in the title insurance commitment policy.

Q: Do you have a title insurance policy for this particular piece of property?

A: Yeah.

Q: Have you provided that to your attorney?

A: I honestly don't know but it's --

Q: I saw a title insurance commitment but I didn't see a policy.

A: Well, but you saw the commitment with the conditions to the commitment. Now again, sometimes Dodds is, as a lot of real estate attorneys are, a little bit negligent in getting the policies out. So, he needs to be scolded for that.

Q: Can we go off the record?

WHERE UPON AN OFF THE RECORD DISCUSSION TOOK PLACE.

Q: Okay. So, we're not sure if a policy was issued

but we'll find out. Okay?

A: And I'm sure if it hasn't been, it's over there in Dodds' file.

Q: Okay. So, when Dan, the real estate agent, contacted you, did he ever mention about it being restricted to agricultural use?

A: I don't recall. Again, this was three years ago.

Q: Okay. That's fine. If you don't --

A: I just don't recall.

Q: Okay.

A: But again, that was something that caught my eye in a hurry.

Q: Okay. When is the first time you heard anything about the property potentially being restricted from agricultural use?

A: I'd have to go back to -- I keep a file on Dan and so I'll have to go back and see when he forwarded this plat because that's when I would have seen the written restriction on it and known about it.

Q: Okay. When you say restriction, what are you referring to?

A: These lots, etcetera, agricultural use only, not to be used for building purposes.

Q: Right. You're not referring to anything else

besides that?

A: That's the only restriction I know about.

Q: Okay. So, you don't recall today whether Dan told you about it or you first discovered it by reading Exhibit number 7?

A: I don't recall that. No. But I do know I knew about it because I always review these plats. And I walked the properties. I told you I did walk out to look at those pine trees.

Q: Right. And you reviewed this plat prior to closing?

A: Yes.

Q: Okay. Exhibit number 7.

A: And Dodds pointed it out to me in the title insurance binder.

Q: Okay. Did you review the binder prior to closing?

A: I did. And it showed it as a restriction.

Q: And when did he send you the binder?

A: Again, I've got it in my computer file. I can get the exact date on it.

Q: All right. Do you recall having a discussion with Dodds about this proposed restriction?

A: No. Because I knew about it.

Q: Okay.

A: There's not anything he could do about it.

Q: You don't recall discussing with Dan? You don't recall discussing it with Mr. Dodds?

A: I didn't need to because it's a fact.

Q: That's fine, sir. I'm just asking you. We'll get to that whether you needed to or not. I'm just trying to find out the facts here. You didn't talk to Dan about the restrictions? You didn't talk to Dodds about the restrictions? Correct?

A: Correct. I knew about the restrictions, though. I don't recall a verbal conversation of three years ago.

Q: Okay. But you recall reviewing this plat prior to closing?

A: And I recall reviewing the title binder prior to it.

Q: And you recall reviewing the title binder prior?

A: And I do recall Dodds telling me, "You know this is restricted," and I said, "Yes."

Q: Okay.

A: Because to most people, that would be a negative. To me, it was a positive.

Q: Okay. Did anybody make any representations to you that not only your lot was restricted but

perhaps other lots were restricted?

A: It says right there; C2, 3, 4 and 5.

Q: Well, let me ask you this. You're a smart man having made a pile of money developing real estate. You would have been observant enough, I would hope, that when you first, having owned the Lucky Road property for about a year and a half, you would have observed that there actually was a structure, a home, on lot C3.

A: Yeah.

Q: Ashley Roberts' property. Right?

A: I didn't know what lot particularly it was on.

Q: You knew it was on one of these lots. Right?

A: I knew it was on one of the lots. Yes.

Q: Right. And you're probably smart enough to put two and two together. Right? Did this thought ever cross your mind in some form or fashion? Hey, looks like Lot C2 through C5 are restricted. Why in the world does Ashley Roberts' have a house on Lot C3 when it's restricted from agricultural use? Did that thought or any thought similar to that cross your mind when you were reviewing Exhibit number 7?

A: I don't recall that crossing my mind. I just knew that the lots out there were generally

vacant and the ones that were next to me, C5, the one next to me is vacant. And just riding down Roper Road, you can see that there's some more vacant lots down through there. So, I thought, this is good.

Q: But you knew that there was a home, a rather big home, on one of the parcels that you contend is restricted by the notation on Exhibit 7.

A: I knew there was a house on a lot floating down through there. Yes.

Q: And you knew that one of those four lots would be used for a non-agricultural use. Correct?

A: I knew there was a house out there. Yes.

Q: So, in other words --

A: I didn't know how it got there or whether the seller had done something probably illegal in violation of the covenant. But anyway, the house was there.

Q: Explain to me; you use the word "covenant". What does the word "covenant" mean?

A: Covenant right here. It says right here.

Q: I got that.

A: Use only for, not to be used for building purposes. That's a covenant.

Q: Well, that's what you say is a covenant but what

do you think a covenant means in general?

A: Again, it's a restriction.

Q: Okay. So, you equate covenant with restriction?

A: Either a restriction for or a restriction to.

Q: Okay. Your primary purpose in buying Lot C5 was to use it in conjunction with the Lucky Road property. Correct?

A: Again, expanding our little farm. Yes.

Q: Right. But, the fact that it was restricted from agricultural use didn't make a difference because you would want to use it any way you want to use it. Correct?

MR. ROSEN: Object to the form.

A: Well, again, not necessarily because you might wind up not being able to use it for agricultural use so the good thing is, this casted in a positive fashion.

Q: Well, generally, again, having made a lot of money in the real estate development business across the entire southeast, would you agree with me that that property is more valuable when it's not restricted?

MR. ROSEN: Object to the form.

A: I can't say that. What would kill would be worth if they had no restrictions on it. So, I don't

know if you can defend that in a real estate class or not.

Q: Okay. So, is it fair to say then, would you agree or disagree that the more restrictions on real property, the more valuable?

MR. ROSEN: Object to the form.

A: Again, I can't make that statement. Let's put it like this. If it's restricted for a dang waste dump, then that's probably not going to be that valuable. So, I don't know how you can say that. I don't know where you're coming from on that at all.

Q: Well, if you're buying a piece of property in general, you'd want to buy a piece of property that --

A: That conforms to what you want to use it for.

Q: Right. And you don't want it to be restricted from something you might want to do in the future so you'd rather have no restrictions on a piece of property. Correct?

A: Well, again, if it's restricted for what you want to use it for, that adds value in the buyer's mind. And that's what it did in my mind.

Q: Yeah. But that's what I'm saying. So, you're glad your Lot C5 was restricted. That's why you

purchased it.

A: In this case, it was a benefit to me to be restricted to agricultural use. That's the other lots, too.

Q: So, your concern was not with your lot but with the other lots being restricted.

A: Well, all the lots and all. Now again, you're telling me that the Roberts' house was built earlier. Well, okay, I accept that.

Q: Well, was that the primary reason why you bought the property is because you believe other lots were restricted to --

A: Correct.

Q: Let me --

A: Two things; it added to my farm and also in any other houses being built down there which is the reason for this lawsuit today.

Q: Okay. So, would you have bought Lot C5 anyway?

A: I don't know. Again, probably for not that kind of money. For $5,000 probably yes. But again, I was happy with the bargain.

Q: Okay. I understand what you're claiming in this case. Let me ask you this. You look at this plat prior to purchasing and you see that there is five lots shown on this plat. Correct? Is

that right?

A: There are five lots shown on the plat. Yes.

Q: C1, C2, C3, C4, and C5.

A: Correct.

Q: Did you ever wonder why only Lot C2, C3, C4, and C5 had the alleged restrictions?

A: I didn't have a clue.

Q: Did it make any sense to you?

A: I didn't focus on it.

Q: Okay.

A: It was what it was. I couldn't change it.

Q: It was what it was. Okay. So, other than your lot, you're claiming in this case that there are three other lots restricted. Correct?

A: That's what it says.

Q: I'm not asking what it says.

A: Okay. I'll read it to you.

Q: I didn't ask you that, sir. I asked you what you're claiming.

A: I'm claiming that this says right here these lots C2, C3, C4, C5 for agricultural use only, not to be used for building purposes.

Q: Okay. And who made that covenant?

A: I don't know.

Q: Okay.

A: But it's recorded.

Q: Okay. Did you notice on this plat the location right underneath Bradham Road? It says, "This lot meets minimum health department standards for modified conventional sub surface disposable system only." Do you see that?

A: Quite honestly, point me to where you're reading.

Q: Right there, sir. Right there.

A: I didn't quite honestly pay attention to it. I was just interested in the restriction.

Q: Okay.

A: Because I wasn't buying C1. I could care less.

Q: Okay. I just read something that's on the plat. Right? You just read it. Right?

A: Right.

Q: And it says, "For Lot C1 only." Do you see that?

A: I see that. But again, I wasn't interested in C1. I was interested in what affected C5 and then the restrictions for agricultural use only which says right here C2, C3, C4, C5.

Q: Well, I'm just trying to find out from your perspective, having someone who has a fascinating experience in real estate. Not many people have bought and sold real estate like you have. And you've developed subdivisions and your company

has assigned restrictions. And I was wondering, when you're looking at this and you're saying, okay, I'm buying it in part because it's restricted from agricultural use. Correct?

A: That's what it says.

Q: Okay. And you're also buying the property because you believe the other lots were restricted. Correct?

A: That's what it says.

Q: And you're looking at these lots, C2, C3, C4, C5 for agricultural use only, not to be used for building purposes. Did it ever cross your mind to figure out why that notation was put on the plat and who put it on there?

A: No. It never crossed my mind.

Q: Okay. Did you believe it was possible that that was something required by the County of Charleston?

A: I'm not qualified to go there.

Q: Okay.

A: I didn't even think about it.

Q: Okay. Were you concerned that your belief that the other lots were restricted was in fact not correct because there was already a large house on Lot C3?

A: Again, I read the restrictions, I relied on it, I bought the property.

Q: Okay. I get it. I didn't ask you that question. I asked you the question, did you buy the property because you thought three other lots were restricted; 4, 3, and 2. And 33% of those other lots, one lot, had a very big home on it. Correct?

A: Yes. I didn't quite honestly think about it. I was just happy that the vacant lots were restricted.

Q: Okay. Did it cause you to believe that maybe my belief that these properties are restricted from agricultural use maybe I need somebody to check on it to see if that's actually correct?

A: Never crossed my mind. I relied on the plat.

Q: Okay. Do you notice on the top center of the plat, it's not the easiest to read, I'll admit, but it has something to do with the road and all the land owners are signing it. Do you see that?

A: I see that. I can't make out the language.

Q: It says, "James Roper has hereby certified that the 25" -- something about the 25 foot right of way -- "and their heirs and assigns guarantees it's maintenance." Do you see that?

A: Is that what it says?
Q: Yeah. Something like that.
A: I can't make it out.
Q: Okay. And you see where that's actually signed by five folks?
A: I can see five signatures.
Q: And one of them is a Roper. There's a Craig.
A: Looks like Julia Roper is the last one.
Q: It does. Doesn't it? And there is a Virginia Roper Brown. Anyway, the point of me saying that is you notice where they signed right underneath that statement. Do you see that?
A: I'm sorry. I see five signatures. Is that what you're talking about?
Q: Yeah. Right.
A: Yeah.
Q: The statement about the road and the agreement to its maintenance and right underneath that you see five signatures. Correct?
A: I do see it. But I'll accept your word about the road. I can't read that.
Q: Okay. There's signatures not located anywhere else on this plat. Is there?
A: I don't see five signatures anywhere else.
Q: Okay. What investigation did Carpenter Braselton

do to confirm that there actually were restrictions on C2, C3, C4, and C5?

A: I relied on the recorded plat that the county has approved.

Q: That's it? Okay. You didn't see any signatures on this. Correct?

A: I see the signatures you're talking about.

Q: Right. But there's no signatures right underneath the notations that you're relying upon.

A: No. But it's on the plat.

Q: Okay. And when you read that these lots, C2, C3, C4, and C5 language, when you read it in conjunction with the language to the right of that regarding C1, would you agree with me, reading those two paragraphs together that the reason why C2, C3, C4, and C5 were restricted from agricultural use is because those lots didn't meet current minimum health department standards for a modified conventional sub surface disposal system?

MR. ROSEN: Object to the form.

A: I think you're just speculating. You don't have a clue any more than I do.

Q: Okay. Do you have any signed writing by any

prior owner of Lot C5 where that prior owner restricts the use of Lot C5?

A: I relied on this.

Q: And this --

A: My title insurance company told me it was restricted. I relied on them. So, I don't have anything that I'm aware of that Herbert Brown did anything beyond because he didn't need to. The plat restricted it. He couldn't change it if he wanted to.

Q: It looks like Ashley Roberts changed it. She's got a house on her property.

A: You'll have to ask Ms. Roberts. I haven't talked to her.

Q: Okay. Have you ever talked to Sal Ezzaoudi?

A: I don't think I have.

Q: Do you know who he is?

A: I'll assume you're talking about one of the lot owners.

Q: Correct. The owner of Lot C4.

A: Okay. All right.

Q: Have you ever talked to him before?

A: Not that I'm aware of.

Q: You know he listed his property for sale at one point in time?

A: Okay.

Q: I'm asking you, do you know? Does Carpenter Braselton have any knowledge that he listed Lot C4 for sale?

A: I can't recall. He may have he may not.

Q: Have you ever had your real estate agent talk to him?

A: You know, Dan talks to all these people. Talks to people all down Lucky Road so he's probably talked to him.

Q: Do you recall, do you have any knowledge of Dan talking to Mr. Ezzaoudi --

A: Again, I don't recall. He may have.

Q: Have you contacted him in conjunction with preparing for this deposition to see if he had any contact with Mr. Ezzaoudi?

A: No. I don't need to.

Q: Did Carpenter Braselton ever have a desire to purchase Lot C4?

A: I can't recall that. They may have. Obviously, they're interested in the area so they may or may not. I can't recall.

Q: Who's they?

A: Well, they would be my wife and all or me. I don't recall anything. May have. I don't know.

Q: And you've never talked to Ashley Roberts?
A: Never talked to Ashley Roberts.
Q: Have you ever talked to Jeremy Cook?
A: Jeremy called me after this lawsuit was filed.
Q: Okay. And what did he say?
A: He said, "What should I do?" I said, "I don't know." I said, "You need to get a lawyer." Which he did. Got a good one.
Q: Have you ever talked to Elliot Quinn?
A: No, I have not.
Q: Do you know who Elliot Quinn is?
A: I understand in some correspondence that he was an engineer that was involved in this thing in some way or another. Other than that, I don't really know.
Q: Okay. He's the person who prepared Exhibit number 7.
A: Pardon?
Q: He's the surveyor who prepared Exhibit number 7. You have not talked to him?
A: Okay. No, I have not talked with Elliot Quinn.
Q: All right. As far as you know, nobody on behalf of the company has talked to him?
A: Not that I'm aware of.
Q: Okay. How about Perceil Delaine? Have you ever

talked to her?
A: No, I don't think so.
Q: And nobody from the company has talked to her?
A: I don't think -- she's one of the owners.
Q: Okay. She's the former owner.
A: Okay.
Q: How about same for James Roper?
A: I don't think I've talked to James Roper.
Q: Okay. Mildred Anderson?
A: Who?
Q: Mildred Anderson.
A: No, I don't know Ms. Anderson.
Q: Ruby Roper?
A: Don't know Ruby Roper.
Q: Raymond Roper?
A: Don't know Raymond.
Q: And Herbert Brown? You purchased C5 from Herbert Brown but you never met him?
A: I didn't go to the closing. I've never met the man. I don't think I ever talked to him.
Q: Okay. And Dan the real estate agent, his name is --
A: Mengedoht.
WHEREUPON A BRIEF BREAK TOOK PLACE.
Q: Do you know who Martha Matthews is?

A: Martha Matthews.
Q: She apparently is the owner of Lot C1.
A: I don't think I've ever talked with Ms. Matthews that I recall.
Q: Looking at Exhibit number 7, the plat, the 1990 plat --
A: Yes.
Q: Would you agree with me to the extent that there was a dispute as to what was meant on that plat, that the person who would have the most knowledge of what was intended by this plat would be the surveyor who signed it?
MR. ROSEN: Object to the form.
A: I have no idea. This plat was done, what, 15 years ago?
Q: Right.
A: So, I have no idea who would be most knowledgeable.
Q: But if you have a question about something that was noted on this plat, somebody who would certainly know why it was noted on the plat would be a surveyor. Correct?
A: I don't know who put the restrictions on the plat, sir. So I can't comment on who would be the person to talk to.

Q: Have you investigated to see who put the restrictions on the plat?

A: Quite honestly, no. I've never investigated it. I accept them on face value.

Q: Okay.

DEFENDANT'S EXHIBIT 8 MARKED FOR IDENTIFICATION.

Q: I'll show you what's been marked as Exhibit number 8. I assume you've seen this before?

A: I have.

Q: Exhibit number 8 is the complaint that you filed against my client.

A: Yes.

Q: Okay. Are you familiar with that?

A: I am.

Q: Did you review it prior to it being filed?

A: I'm sure I did. I try to be diligent.

Q: On paragraph 16 --

A: That is correct.

Q: It says, "Plaintiff purchased Lot C5 in reliance on the agricultural restrictions stages in the plat that created and limited the use of Lots C2, C3, C4, and C5." Do you see that?

A: I see that. Yes.

Q: And the evidence that you relied upon that you've testified to today would be that you review the

plat. Right?

A: Review the plat and also was alerted by the closing attorney --

Q: Closing attorney.

A: -- that there were restrictions and by the title insurance binder that it was restricted.

Q: Three things; you reviewed the plat, the attorney told you, and the title insurance binder.

A: And I relied on that.

Q: Yeah. Anything else other than those three things?

A: I don't know. That's very much face value. There was restriction there. I accepted it and relied on it.

Q: Okay. But other than those three items that you've already testified to, there's nothing more than that?

A: I'm not aware of what else it might have been.

Q: Okay.

A: It's pretty much face value. There's a restriction.

Q: Okay.

A: And let's refer back to 14 on that, too, that reinforces it.

Q: What's 14? Yeah. The way you alleged in

paragraph 14. I understand. Paragraph 18. It says, "Defendant Ezzaoudi is actively marketing Lot C4 for sale to the public." Do you see that?

A: I see that.

Q: How did you know that?

A: Again, I guess I heard it. I don't recall at the time.

Q: Is that the reason why you filed this lawsuit?

A: No. I just wanted to basically get the determination that this was a reliable restriction.

Q: What caused you to file this lawsuit on March 28th, 2016 when you purchased Lot C5 on November 10, 2014?

A: Well, getting around to a few months later, a very short period of time in the world of real estate. And wanted to make sure that the agricultural restriction I relied on was correct before I went out and expended some money to improve my agricultural lot, C5.

Q: If you thought the restriction was valid, why did you file the lawsuit?

A: Again, I just wanted to make sure it was valid. I'm meticulous.

Q: Okay. Well, it doesn't make much sense but if

you thought it was valid --

A: It makes sense to me, sir.

Q: Okay. How did it make sense? Why would you file on something that you thought was valid on its face by reviewing the survey, the closing attorney told you, the title insurance told you, and it says it on the plat? If you're so sure about the restrictions being valid, why did you file this lawsuit?

A: Just more insurance, sir.

Q: What do you mean by "more insurance"?

A: The court affirming it.

Q: Why would you need the court to affirm it if it was so obvious?

A: Because, again, I think as my lawyer said, "What's the best way to make sure this is absolute?" And he said, "Well, let's get the court to affirm it."

Q: Why? Because you reached the conclusion, though, it was not absolute.

A: No, no. Not at all. I relied on it, spent $170,000 relying on it.

Q: Okay. Again, if it was so absolute, why would you file a lawsuit over it?

A: Probably because I'm dumb but my lawyer told me

to do it.

Q: Okay. Isn't it true you filed this lawsuit because you knew Mr. Ezzaoudi was trying to sell his property?

A: No, not at all.

Q: Okay. Would you --

A: Because again, anybody buying Mr. Ezzaoudi's property probably would be informed by their closing attorney just like mine said, "Sir," or, "Ma'am, that property's restricted. I just want to point it out to you."

Q: Right. That's so you contend. You contend --

A: Well, that's what my lawyer and my title company told me.

Q: Have you had any subsequent communications with your title insurance company after the filing of this lawsuit?

A: Do what now?

Q: Have you had any communications with your title insurance company about this lawsuit?

A: No. Why should I?

Q: I was just curious. You said you relied on the restriction so you can use your property as a farm but why would that make a difference? Would you agree with me that if your property was

unrestricted, you could still use it as a farm anyway. Right?

A: Not necessarily. There's zoning codes and I didn't want to violate a zoning code. If the restriction's valid, what's it zoned for then?

Q: Okay. Well, I assume if you want to use it as a farm, you've already looked at the zoning and you can use it as a farm.

A: I'd rather the restriction.

Q: Okay. Well, you know the difference between a restriction and zoning.

A: Yes.

Q: Okay. Zoning is done by the government. Correct?

A: Correct.

Q: And a restriction is also done by the government, too.

A: Well, in this case, the government certainly had a hand in it.

Q: Tell me how the government had a hand in it.

A: Well, because they recorded it in their official records.

Q: Well, for that matter, the government has a hand in every real estate transaction that's recorded. But how would they have a hand in the

restriction?

A: Again, you've got to have approval. My understanding is, again, there are multiple requirements throughout the many states that I've dealt in but that the government's got to approve the recording of a plat of a subdivision of property, which is what this is.

Q: Right. But how did they have a hand in the clause that says, "These lots, C2, C3, C4, and C5 for agricultural use only, not to be used for building purposes."

A: I don't know. That's a restriction on the recorded plat that I relied on.

Q: Okay. Who put that restriction on the recorded plat?

A: I don't know.

Q: Okay. You don't know if it was the government?

A: Pardon?

Q: You don't know if it was the government; you don't know if it was a surveyor.

A: I don't know who it was. I wasn't there, what's that, 17 years ago -- 27 years ago.

Q: Okay. And you haven't investigated why that --

A: I don't need to. I relied on it.

Q: Okay. Just because you relied on something,

doesn't mean you don't have to investigate it. Do you agree with me?

A: I don't know, sir.

Q: Okay. Just because you relied on something, doesn't absolve you of any duty that you may have to investigate. Would you agree with me?

A: I don't know. I'm not qualified to go down that road with you.

Q: Okay. Paragraph 12 of your complaint. You said the deeds conveying lot C2, C3, C4, and C5, though the defendants and plaintiffs specifically state that the conveyances are being made subject to all restrictions, reservations, easements and other limitations that appear of record including on the recorded plats. Do you see that?

A: I see that. Yeah.

Q: Can you show me where the deed to your Lot C5 Exhibit A in front of you says anything about that the conveyances being subject to restrictions, reservations, easements, and other limitations that appear of record including on the recorded plats?

A: Well, yes. It says, "It has been granted, bargained, of sale and released subject to those matters set forth on Exhibit A. Let's go to

Exhibit A. It says plat of the subdivision is where it's conveying it to me. There is subject to all easements, restrictions, and rights of way of record.

Q: All right. It doesn't say also including on the recorded plats. Does it?

A: It says earlier than that where it is conveying all -- in the first paragraph.

Q: Right. That's referencing the plat on the 6 acres.

A: And again, easements, restrictions, and rights of way of record. Are you saying that this plat is not a record?

Q: I get to ask the questions, sir. The question is --

A: Okay. Well, this plat is of record, sir.

Q: Right. It says you specifically allege that the deeds for all the lots specifically state that the conveyance being made subject to all restrictions, reservations, easements, and other limitations that appear of record including on the recorded plats. Tell me where this deed conveys the property subject to restrictions that appear of record including on the recorded plat. So, is there any language in here that says

including --

A: Yes. Right at the paragraph before that. It references the plat. The plat of the subdivision of 11.95-acre tract.

Q: Okay. What are you seeking in this case?

A: What?

Q: What is the relief that you are seeking in this case? The relief that Carpenter Braselton is seeking.

A: To affirm that the only use of this property is for agricultural use per the recorded plat.

Q: Anything else?

A: Well, let's read the complaint. The defendant's lots are burdened by restriction, that the lots not be used for building purposes and be used for agricultural uses.

Q: In paragraph 31, you're requesting a declaration that the plat contains a restriction that limits the use of Lot C2, C3, C4, and C5 to agricultural use and prohibits the use of said lots for building purposes.

A: I'm saying that's the requested declaration.

Q: Right. Are you requesting that Lot C3 owned by Ashley and Jeremy Cook, that already has a house on it, that you're asking it to be declared that

it could only be used for agricultural use?

A: Now, we're saying that it contains restriction that it can only be used for agricultural use and prohibits the use of said lots for building purposes. We're not trying to injure Ms. Roberts. No one's attacking her house.

Q: You're not trying to prevent her from using her house?

A: We're not trying to get the court to order destruction of her house. No.

Q: Well, you're not asking the court to prevent her from using her house.

A: That's a legal question. That's beyond my qualifications.

Q: Well, I'm asking what you're seeking in this case.

A: I won't answer. I'm not qualified to answer. I don't know.

Q: You're not qualified to tell me what you're seeking in this lawsuit?

A: Yes. Right here. I can read it word for word to you.

Q: Well, I'm just trying to tell you, it says --

A: I'll read it. Let me just read this thing to you then.

Q: Okay. You don't have to read it. We can read it. Paragraph 35 says that the plat's restriction on the use of Lots C2, C3, C4, and C5 prohibits the defendants and subsequent purchasers from using the property for any further non-agricultural purpose including building purposes. So, the question I have for you is are you seeking to prevent Ashley Roberts and Jeremy Cook from using Lot C3 as a home?

A: I don't know. I'd have to refer to my attorney on that. That's a legal question I'm not qualified to answer. And I will not answer it.

Q: Okay. Can you instruct him to answer it, please?

MR. ROSEN: You just need to answer the questions.

A: What?

MR. ROSEN: You need to answer the question.

A: I'm not qualified.

MR. ROSEN: I understand. I can still object, but you still have to answer. Understand? You need to give him your best answer.

A: They're using it for a structure now. Someone lives in the home. So, that would be for the court to decide whether to restrict the use of that home for living purposes then.

Q: Okay. So, when we go to court, you're going to seek to prevent Ashley Roberts and Jeremy Cook from using Lot C3 as a home?

A: Hopefully we'll get settled before we get there. Again, when we get to court then I'll be relying on my lawyer.

Q: Okay. Well, when I represent to the court where your position is in this case, I want to be accurate. And what you're telling me today is you're going to ask the court to preclude Ashley Roberts and Jeremy Cook from in the future, using the property for anything other than agricultural use.

MR. ROSEN: Object to the form.

A: Huh?

MR. ROSEN: You can answer.

A: I don't know. I haven't decided yet what we'll request when we get to court.

Q: Well, guess what? Now's your time to decide. You need to tell me now.

A: Again, I'm not qualified, so I'm not going to go down that road. The answer is, I don't know, young lady.

Q: Okay. You're referring to the court reporter, not me, as young lady. Right?

A: I wanted to make sure she got that I don't know.
WHEREUPON AN OFF THE RECORD DISCUSSION TOOK PLACE.
Q: In your answers to interrogatories, I asked you to identify the names and addresses of all members and managers of plaintiff. You said Mamician (sp), LLC is the sole member of plaintiff?
A: Well, that's my wife's holding company.
Q: Okay. So, your wife has a holding company and it's a member and it says here Elaine C. Terry, who's your wife --
A: Yes.
Q: -- is the managing member.
A: Yes.
Q: So, you have a managing member -- hold on. So, your wife and her LLC are the only ones who are members of Carpenter Braselton, LLC.
A: That is correct.
Q: Have you reviewed any documents that your lawyer has obtained from Charleston County or that I provided to him from Charleston County?
A: I'll have to look at them to see. I don't recall.
Q: You don't recall.
DEFENDANT'S EXHIBIT 9 MARKED FOR IDENTIFICATION.

A: I haven't reviewed this because it's just dated March the 7th.

Q: Okay. All right. This is a four-year request that I received. It looks like March 7th, 2017 or around that time.

A: Okay.

Q: And as we go through this, sir, if you look on the bottom right, there is a page number that we added to it. Do you see that?

A: Yes.

Q: Okay. So, when I refer to page numbers, that's where I want you to look.

A: Okay.

Q: Just to make life a little bit easier. And you'll see just a couple of things. You'll see the page number 2 says Charleston County Planning Department and Subdivision Transmittal Coversheet. Do you see that?

A: Yes.

Q: And meeting date, there's a couple dates there in 1990. Do you see that?

A: Yes.

Q: And if you'll look at the bottom, there is a number, 13511. It says lands of James Roper, James Island.

A: Yes.

Q: Do you see that? And then it says there is a planning committee recommendation for approval and a planning board recommendation for disapproval, stipulation number 8.

A: Yes.

Q: Okay. Now, let me change exhibits on you. If you go back to the 1990 survey which is Exhibit number 7, if you look at the bottom right, you see where it says approve the final plat?

A: Right.

Q: And there's a stamp. There's two signatures; one by the Clerk of Charleston County Counsel, another by the director of Charleston County Planning board.

A: Right.

Q: And you see dates December 4, 1990?

A: Right.

Q: And it says PB number 13511?

A: I see it.

Q: I'll represent PB means Planning Board.

A: Okay.

Q: Okay. And it's 13511. And you'd agree with me that's the same number that's on the bottom of Exhibit number 2, number 13511. Do you see that?

A: Yes.
Q: If you see where it says, "Disapproval stipulation number 8"?
A: I see that.
Q: Okay. If you skip to page 4, you will see standards, subdivision stipulations. Do you see that?
A: Yes.
Q: All right. Look at number 5. It says, "This/these lots/lot does/do meet minimum health department safety standards for modified conventional sub surface disposal system only." Do you see that?
A: I see that.
Q: And if you look back at the plat of your Roper Road property, you'll see that that language, I believe, is on -- let me make sure we're looking at the right one, the Roper Road property. That language in stipulation number 5 is actually on your plat, or the plat of the Roper Road property. Would you agree with me?
A: It's got the language. Yes.
Q: Yes. Okay. And if you would, go, on page number 4, to stipulation number 8. And it says, "For agricultural use only; not to be used for

building purposes."

A: I see that.

Q: Okay. And that is the same language that's on the plat of Lot C1 through C5. Correct?

A: No, no. On the plat for C1 to C5 here, it's got these lots, C2 and lists them out.

Q: And then it has the language?

A: Yes. For agricultural use only, not to be used for building purposes.

Q: Right. It describes the lots and then it has stipulation number 8 language. Correct?

A: That's right. That is correct.

Q: Okay. Have you seen these subdivision stipulations before?

A: No.

Q: Has anybody from Carpenter Braselton ever asked the county what these stipulations are?

A: No.

Q: Have you seen any of these documents we've discussed thus far on Exhibit number 9 before?

A: What's that now?

Q: The documents that we've talked about thus far that are part of Exhibit number 9 --

A: I have not seen the documents on Exhibit number 9.

Q: All right. So, let's skip over to page 9. You see where it says "Agenda, November 26th, 1990" in the top left hand corner?

A: Yes.

Q: And you see where it says "Case number 13511, lands of James Roper" right in the center of the page?

A: Yeah. Okay. Right. Yeah.

Q: And that's the same case number that is on the plat in Exhibit number 7. Correct?

A: Yes.

Q: And do you see at the bottom where it says that health department recommends disapproval?

A: I see that.

Q: And then it says, "Stipulation number 8"?

A: Yes.

Q: And do you see where it says a planning staff and public works department recommended disapproval as well?

A: Where is this?

Q: Paragraph 1.

A: Yeah. At the top line. Yeah.

Q: And you see in there where it says that recommended the granting of a variance which would include -- and this is toward the bottom --

that would allow for the creation of lots which do not meet minimum soil requirements for any type sub surface sewer disposal system. Do you see that?

A: I see that. Yeah.

Q: Okay. If you look at the next page, Exhibit number 10, do you see that? Does Exhibit number 10 look familiar?

A: Yes. I think we've got this, what is Exhibit number 7.

Q: Right. And do you see where it is signed in the bottom right hand corner by somebody, Mr. Elliot Quinn?

A: Right. Yes.

Q: It would actually be the bottom left hand corner, the way it's faced.

A: Well, it's the bottom right corner.

Q: Yeah. You know what I'm talking about. You see a seal of survey. Right? It's the same thing as Exhibit number 7. Right? It has the same signatures as Exhibit number 7. Correct?

A: Right.

Q: And you also see the signatures we talked about earlier before in the top center of thee page, the signatures of the land owners.

A: Right.

Q: All right. But you don't see the restriction you were relying upon in this case there. Do you?

A: No, but that's not the one that's recorded. This is the one that's recorded.

Q: I understand that. Exhibit number 8 page 10, there's a signed and sealed survey by the surveyor. Correct?

A: It is a survey but it's not a recorded survey.

Q: It's not a recorded survey but the notations you're relying upon in this case are not on the plat.

A: Not on the unrecorded plat.

Q: Not on the unrecorded plat which is page 10 of this Exhibit number 9.

A: But it's on the recorded plat.

Q: I understand that. If you go to page 12, do you see where it says, "Subdivision application"?

A: All right.

Q: Do you see where it's 13511, the same case number we've talked about?

A: Say it again, now.

Q: Where it says, "Office Use Only", application number is 13511.

A: I'm looking for it. Yeah. Up at the top. Okay.

Q: That's the case number we've previously talked about; the same case number that's on Exhibit number 7, the subdivision plat. Correct?

A: Right.

Q: And you see where Precision Land Surveying Company is the applicant?

A: Yes.

Q: And it's the same surveying company that prepared the recorded plat, which is Exhibit number 7; bottom left hand corner.

A: Yeah. Okay.

Q: And you see where the question's asked, is public water available? It was answered no. Is public sewer available? It was answered no. Do you see that?

A: Yes.

Q: And as far as you know, Lot C5 today has no public sewer or public water.

A: Not to my knowledge. No.

Q: Going to page 15, do you see a letter dated December 11th, 1990 from Charleston County Counsel to Precision Land Surveying?

A: I see it.

Q: It says that the County Counsel at their meeting on December 4, 1990 granted approval of the

variance from three sections? Do you see that in the first sentence?

A: I see that. Yeah.

Q: And then in the middle of the paragraph which is quote, "A variance from section III E-12 will allow for the creation of five lots which do not front an estate or county approved road and a variance from section III E-6 will allow for the creation of lots which do not meet minimum soil requirements for any type sub surface sewer disposal system." Do you see that?

A: I see that. Yeah.

Q: And you see the last two paragraphs, "Approval of this plat includes the following stipulation. For agricultural use only, not to be used for building purposes." Do you see that?

A: I see that.

Q: Would you agree with me that the reason why that language appears on the recorded plat, Exhibit number 7 is because Charleston County wanted that language to appear on the plat?

A: It looks like they required it. And also that the private owners agreed to it.

Q: Where does it say that?

A: Right up here on the signature -- I'll assume

these are the property owners up here.

Q: You're making up stuff now? Let's go back --

A: Well, again, why would these people have signed this if they weren't the property owners?

Q: Let's go back to page 10 then.

A: Okay.

Q: Let's go to page 10. Do you see the signatures on there?

A: Right.

Q: Those same signatures you referred to? Those signatures were on there before the notations were put on the survey.

A: Correct. But then they accepted this letter to go forward.

Q: Okay. All right. So, do you believe with what we discussed now in Exhibit number 9 that those lots were forever restricted to agricultural use?

MR. ROSEN: Object to the form.

A: Until all the property owners agreed to change and then they get the county to agree to accept the change.

Q: Okay. All right. Let's go to page 19. September 6, 1989, there's a letter from DHEC to James Roper and Virginia Brown. If you look at the second paragraph of that letter it says, "We

are pleased to inform you that the proposed Lot C1 does comply with current minimum standards for a modified conventional sub surface treatment and disposal system. Do you see that?

A: I see that.

Q: Okay. And the next paragraph, "With regret that we inform you that the proposed lot C2, C3, C4, and C5 do not comply with current minimum standards for any type approvable sub surface treatment and disposal system offered in SC DHEC regulations 61-56. Do you see that?

A: I see that. Yes.

Q: Do you see the following paragraph, it says, "Planning board approval of your plat cannot be recommended due to the unsuitability of Lot C2 through C5. Do you see that?

A: I see that.

Q: It says public sewer is located at the end of existing pavement on Bradham Road. Do you see that?

A: I see that.

Q: Is that correct?

A: I don't know.

Q: Okay. The final sentence says, "Suggest that you contact the James Island Public Service

Commission about extending the sewer lines down your proposed right of way to make each of these lots accessible to public sewer service." Do you see that?

A: I see that.

Q: Okay. Do you believe that DHEC is suggesting that if public sewer was extended to those lots that DHEC would amend its subdivision of those lots?

MR. ROSEN: Object to the form.

Q: Would have recommended approval of the plat?

MR. ROSEN: Object to the form.

A: I don't know if they recommend approval of the plat or not. It says, "Cannot be recommended." So, I don't know if DHEC's recommending approval of the plat or not.

Q: If you go to page 24, have you seen this letter before? This is page 24 of Exhibit 9.

A: I'm looking at it.

Q: Okay. Take your time.

A: It seems to be a letter signed by five people.

Q: Okay.

A: Okay. So, what are you asking?

Q: Well, my question is, have you seen this letter before?

A: No.

Q: Okay. You see the first sentence? It says, "We, the heirs of James Roper, would like to request variances from the sections of the Charleston County Subdivision Regulations due to the fact that we're trying to subdivide this tract for family purposes." Do you see that?

A: I see it.

Q: Do you see at the bottom it's signed by the heirs of James Roper?

A: I see that.

Q: It says, "Virginia R. Brown." Do you see that name?

A: I see that.

Q: And you'll see Perciel Prioleau, P-R-I-O-L-E-A-U.

A: I see it.

Q: Florence Flemming.

A: Yes.

Q: Ruth Roper Craig.

A: I see that.

Q: And Julia A. Roper.

A: And who?

Q: Julia A. Roper.

A: Right. I see that.

Q: Okay. If you go back to Exhibit number 7.

A: Okay. All right.
Q: Those are the same names that signed that little notation regarding the road in the middle of the survey.
A: I see that up there, the three names.
Q: The five names.
A: Five names.
Q: It's the same five names. Would you agree with me?
A: Yeah. It looks to be.
Q: Okay. Going to the second sentence of the first paragraph --
A: What now?
Q: I'm sorry. Going back to page 24, right where you are, on Exhibit number 9, the second sentence says, "We as heirs of James Roper, Sr. are ourselves getting old and would like to straighten out the title with this property prior to our deaths so that our children and grandchildren don't have a problem associated with heir's property." Do you see that?
A: I see that.
Q: And if you look at the next paragraph, the last sentence, it says, "We are aware that this land possesses very poor soil conditions for septic

systems and would like to request that the subdivision be approved with the stipulation that any lot which will not support a septic system be restricted from becoming a building lot until such time the public sewer service can be provided to that lot. Do you see that?

A: I see that.

Q: All right. So, can you agree with me that it was their intent to seek a variance restricting the property from use but that once public sewer service was available, that the lot would not be restricted?

MR. ROSEN: Object to the form.

A: I don't know what the intent was beyond that. I don't know if they contacted the sewer provider. This was, again, 28 years ago.

Q: Yeah. You can agree with me, though, that the --

A: I have no idea what their intent was, sir.

Q: Okay. Would you agree with me that the best indicator of what they intended would be their own words?

A: I don't know. Again, they came along and agreed to have a plat recorded restricted to agricultural use so I don't know what their intent was.

Q: Okay. Well --

A: If they had not wanted this plat recorded -- because they pulled the plat.

Q: You're speculating that. Maybe they had no choice. But if you want to find out what their intent was, would you agree with me, that the best indicator of what they intended would come from words from their mouth?

A: I don't know what the intent was.

Q: I didn't ask you what their intent was. I asked you what the best indicator of their intent was.

A: And I don't know what other indicators we've got.

Q: We have their words, signed.

A: We also got where they agreed to have this plat recorded, which was about 18 months after this letter was written.

Q: Right. But would you agree with me that the best indicator of what their intent is would be the words coming out of their mouth?

A: No. Because, again, they agreed 18 months later to have the plat recorded with the restriction on it.

Q: After reviewing Exhibit number 9, would you agree with me that the reason why the agricultural use language appeared on the plat was because of the

requirements of Charleston County or the Department of Health and Environmental Control?

A: I don't know. I wasn't there.

Q: I'm not asking you --

A: I do not know what was agreed to. I was not there.

Q: Okay. How about to the extent you have any knowledge of what happened, then, eliminated from your mind and talk about what we just read, which is Exhibit number 9. From reviewing Exhibit number 9, in a vacuum, would you agree with me that the reason why the agricultural use language was placed on the plat, Exhibit number 7, was because Charleston County required it?

A: I don't know. This was 18 months later. Something changed where they agreed to this restriction to be placed on this property.

Q: Well, let's go back to Exhibit number 9 page 4 where it talks about standard and subdivision stipulations.

A: Page 4?

Q: Yes.

A: Okay.

Q: Do you see that?

A: Yes.

Q: And it says, paragraph 8, that's the agricultural use language. Correct? That comes from Charleston County. Would you agree with me?

A: Well, it's part of the wording on that and then it was expanded on the plat for four more lots.

Q: Right. To add the lot numbers that were affected.

A: It was expanded when they agreed to the recordation of the plat.

Q: It's a lot to impact there. It was expanded. What was expanded? You said it was expanded when they agreed to the recordation of plat. So, my question to you, what was expanded?

A: Well, obviously, they added the words for these lots, C2, C3, C4, and C5.

Q: Okay.

A: And that language restriction is there. The property owners, if they were not advised by the surveyor that this was a restriction, then they could have an issue with them but they had agreed to the recordation of the plat. Someone did; said okay.

Q: If that language was added there because it was a Charleston County requirement and that requirement was premised on the fact of whether

an approved sewer system was available, and today it is available, would you agree with me then the folks who own lot C2 through C5 can use the property for any use other than agricultural use?

A: No. I would not agree with that.

Q: Okay. So, you want to restrict your property?

A: The property is restricted. Right here.

Q: Okay. Is there a mortgage on the Lucky Road property?

A: When you say the Lucky Road property, which property do you mean?

Q: I mean the first property that you bought; the barn. Not Lot C5.

A: No, there's not a mortgage.

Q: Is there a mortgage on Lot C5?

A: No.

Q: Are there any other liens on Lot C5?

A: Not that I'm aware of.

Q: You have liens against you individually. Don't you?

A: What now?

Q: You have liens against you individually.

A: Personally?

Q: Yeah. Judgments.

A: I do. But that don't have anything to do with

this lawsuit.

Q: Who's Diamond Homes of Southwest Florida, Inc.?

A: It's an entity I had an interest in that's defunct.

Q: Did that develop property in Florida, I assume?

A: They did.

Q: Okay. Subdivisions?

A: They did.

Q: And Whaley Funding Group, LLC. What's Whaley Funding Group, LLC?

A: That is a creditor of sorts.

Q: And they've got a judgment against you for about $4 million?

A: I don't know the amount. They say they have a judgment is what I understand.

Q: How about Brentwood Homes of North Carolina, Inc.? What's that?

A: That's a defunct company.

Q: And that did subdivisions in North Carolina?

A: Huh?

Q: That did subdivisions in North Carolina?

A: They did. Past tense.

Q: Okay. How about Monteith Investments?

A: That is a company that my wife owns.

Q: Okay. Well, I see here that Montieth Investments

obtained a $1.3 million judgment against you. Is that right?

A: Whatever it says. Whatever the records say, I'm not disputing it.

Q: So, an LLC that your wife owns obtained a judgment against you?

A: Apparently so.

Q: So Monteith Investments, LLC is a --

A: A defunct company. Well, not -- Monteith is not. The company that I had is defunct. I'm sorry.

Q: And this is in York county. Did you do work in York County?

A: We had a development in York County. Yes.

Q: Which development was that?

A: I don't recall. It's gone. It has nothing to do with this dispute.

Q: If Carpenter Braselton, LLC didn't get a loan to purchase the property, how did it come up with the cash?

A: I don't know. You'd have to ask the owner.

Q: Your wife?

A: Uh-huh.

Q: What is the address where you all live in Charleston?

A: What's that now?

Q: The address of your home in Charleston. Maybe you gave that to me. You gave me your Florida address. What's your second home address in Charleston?

A: 458 Wampler Drive.

Q: 458 -- how do you spell that?

A: W-A-M-P-L-E-R.

Q: That's in Charleston?

A: Yes.

Q: I asked you a question when we were going through the 30(b)(6) notice, the notice of deposition with all the categories. One of the things that you said you can't testify is to the fair market value to the property because you said that you're not an expert.

A: I'm not an expert, no.

Q: Well, the reason why I'm asking you this question is because landowners have the right in South Carolina to testify about the value of the property. Just like an appraiser does and if you're telling me that you have -- that Carpenter Braselton, LLC has no opinion as to the value of lot C5, that's fine.

A: And they're not qualified to.

Q: Okay.

A: I'm not an appraiser and neither is anybody in that company.

Q: So, at the trial of this matter, you would not be able to provide testimony as to the value?

A: I could do this. I could rely on the most expert I know and that's the Charleston Tax Assessor.

Q: All right. Okay. Do you recall whether the Lucky Road property's encumbered by any restrictions?

A: I don't know.

Q: When you negotiated to purchase Lot C5, was there a lot of negotiating that took place? Do you recall?

A: I don't recall. Again, as you know, I've been involved in quite a number of real estate transactions so I don't recall the particulars of a transaction like this; three years ago.

Q: Do you recall yourself ever signing a declaration of covenants and restrictions for one of the subdivisions that you developed?

A: I'm sure that I have. I don't recall specific ones. Remember, I had 250 people working for me in five states.

Q: All right.

A: So, very likely some of the managers that were

more directly involved executed some restrictions of covenants.

Q: Is Carpenter Braselton, LLC currently involved in any litigation?

A: Say that again.

Q: Is Carpenter Braselton, LLC currently involved in any litigation other than this lawsuit?

A: Not to my knowledge.

Q: Okay. We've talked about it some but I know there's been pending lawsuits, there were lawsuits against you individually. Are there any currently pending lawsuits against you individually?

A: Probably so but what the heck's that got to do with Carpenter Braselton owning a Lucky -- a Roper Road property?

Q: Okay.

A: There may be but who cares? It has nothing to do with this.

Q: Maybe I care. That's why I ask. Do you know?

A: I don't know. I mean, yeah. There's litigation I'm involved in, but again --

Q: Okay. I'll ask you when I take your deposition. That's fine.

Q: Did you also buy Roper Road when you purchased

Lot C5?

A: Say it again.

Q: Did you also buy Roper Road?

A: I think that Roper Road, the title to Roper Road, the road itself, yes. I conveyed to Carpenter Braselton and of course subject to the restrictions of record -- restrictions and easements of record.

Q: Right. Do you pay taxes on that? Does Carpenter Braselton pay taxes on that parcel; the road?

A: I'd have to look at the tax assessor and the tax collectors and public website and see.

Q: What is your wife's name again?

A: Pardon?

Q: Your wife's name again?

A: Elaine.

Q: I'm showing you, this is a contract to purchase Lot C5.

A: Okay.

Q: And there's a signature, Carpenter Braselton, LLC's manager. Do you know who that is?

A: The one that says manager?

Q: Yeah.

A: Yeah. That's my wife's bookkeeper.

Q: Who's that?

A: Her name's Jacqueline Corry.
Q: Jacqueline Curry?
A: Corry.
Q: C-O-R-R-Y?
A: Right.
Q: And do you know where she resides?
A: She resides in Georgia.
Q: Does she have authority to sign on behalf of Carpenter Braselton, LLC?
A: You'll have to ask her and my wife that.
Q: Is she a manager?
A: You'll have to ask her and my wife that.
Q: Well, I'm asking you because you are the designated representative.
A: Yeah, but also, this was 18 months ago and I know what's going on today.
Q: Okay. Let's go ahead and make this an exhibit.
DEFENDANT'S EXHIBIT 10 MARKED FOR IDENTIFICATION.
A: What's your question?
Q: Did you review Exhibit number 10 prior to Carpenter Braselton signing? And when I say you, I mean Mr. Terry.
A: Again, nearly two and a half years ago, I don't know.
Q: Okay. All right. Let's take a five-minute

break. I think I'm done. Just let me check my notes to make sure I didn't miss anything.

WHEREUPON A BRIEF BREAK TOOK PLACE.

Q: Just a few more questions. When did you complete construction of the Lucky Road property or do you remember? About a year ago?

A: Well actually, it's still a work in progress, quite honestly.

DEFENDANT'S EXHIBIT 11 MARKED FOR IDENTIFICATION.

Q: Okay. But you got your final certificate of occupancy, Exhibit number 11.

A: Yeah.

Q: It shows the date April of 2016. Is that right?

A: Well, this is the CO, yeah, like I said. But there's still work going on. Not for the habitable part upstairs. That's all finished.

Q: You're done with the habitable stuff on the date of that CO, which I have in front of me. Is it April of 2016?

A: April of 2016. Yes.

Q: And is that about the time when you thought it was sufficient and complete to be habitable?

A: Yeah.

Q: Okay. That's all the questions I have. Thank you.

A: Thank you.

MR. ROSEN: I don't have any.

(Deposition concluded at 1:40 p.m.)

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STATE OF SOUTH CAROLINA

C-E-R-T-I-F-I-C-A-T-E

COUNTY OF RICHLAND

I, Annie Holbrook, Court Reporter and Notary Public, certify that I did have **Edward Lee Terry** to appear before me at 10:30 a.m. on Wednesday, March 22nd, 2017 at Rosen, Rosen & Hagood, 151 Meeting Street, Suite 400, Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 1st day of April, 2017.

Annie Holbrook

Notary Public for South Carolina
My Commission Expires: January 21st, 2024

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-1560

Carpenter Braselton, LLC,

Plaintiff,

vs.

Ashley Roberts; Jeremy Cook; and Salaheddine Ezzaoudi,

Defendants.

NOTICE OF TAKING 30(b)(6) DEPOSITION OF PLAINTIFF

TO: JOHN E. ROSEN, ESQUIRE, Attorney for Plaintiff:

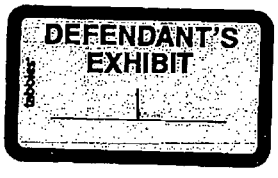
YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Ashley Roberts, now known as Ashley Roberts Cyronak, Jeremy Cook, and Salaheddine Ezzaoudi ("Defendants"), through their undersigned counsel, will take the deposition of the designee of Plaintiff Carpenter Braselton, LLC ("Plaintiff") from among the officers, directors, managing agents, or such other persons who consent to testify on its behalf and who are most knowledgeable regarding the following:

1. Each fact, allegation, and claim set forth in Plaintiff's Complaint and Plaintiff's Reply to Defendants' Counterclaims.

2. Plaintiff's responses to Defendants' First Set of Interrogatories and First Requests for Production of Documents.

3. The documents Plaintiff has produced in this case and the investigation Plaintiff and/or its representatives have conducted to acquire and produce documents responsive to Defendants' First Requests for Production of Documents.

4. All relief Plaintiff is claiming or seeking in this action.



5. Plaintiff's purchase, ownership, use, and intended future use of the real property described in paragraph 2 of the Complaint ("Plaintiff's Property").

6. All documents and representations Plaintiff relied upon in purchasing Plaintiff's Property.

7. All due diligence performed by Plaintiff, its agents, or representatives related to its purchase of Plaintiff's Property.

8. Plaintiff, its agents, or representatives' visits to Plaintiff's Property prior to Plaintiff purchasing Plaintiff's Property.

9. The construction, nature, size, and use of the building or improvement on the property owned by Plaintiff adjacent to Plaintiff's property, which adjacent property bears Charleston County TMS No. 341-00-00-028 and has a street address of 2284 Lucky Road.

10. The plat entitled "Plat of the Subdivision of a 11.95 tract (5.95 Highland) owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina" made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989, and recorded on December 31, 1990 in Plat Book CB, Page 130, RMC Office for the County of Charleston ("1990 Plat") and all facts and circumstances related to the 1990 Plat and the approval thereof.

11. Whether sewer or water is available for use on Plaintiff's Property.

12. All representations made to Plaintiff or its agents related to the restrictions you claim encumber Defendants' Property and Plaintiffs' Property.

13. Other real property owned by Plaintiff and whether such real property is encumbered by restrictions.

14. The identity of the shareholders, officers, managers, and directors of Plaintiff.

15. The fair market value of Plaintiff's Property.

16. Plaintiff or its agents or representatives' communications with Charleston County or any other governmental entity related to the facts, allegations, and claims set forth in Plaintiff's Complaint or the 1990 Plat.

17. All communications made by Plaintiff (or its agents and representatives) with any of the Defendants or their agents or representatives, or their predecessors in title, related to the facts and circumstances of this case, the property owned by Defendants, or the 1990 Plat.

Said deposition is to be taken upon oral examination, for the purpose of discovery and/or used as evidence in the above-captioned action, pursuant to the South Carolina Rules of Civil

Procedure, before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day. Plaintiff shall designate the appropriate officer(s), director(s), or managing agent(s) or other person(s) who can testify on behalf of Plaintiff to respond to the above areas of inquiry. **All designated official(s) or person(s) are directed to bring with them to the deposition all documents which relate to the subject areas of inquiry pursuant to Rules 30(b)(5) and 34, SCRCP.**

Notice is further given as follows:

Date:	Wednesday, March 22, 2017
Time:	10:30 a.m.
Place:	Rosen, Rosen & Hagood, LLC 151 Meeting Street, Suite #400 Charleston, SC 29402

You are notified to appear and take such part in the examination as you may be advised and as shall be fit and proper.

PLEASE TAKE NOTICE that the deposing parties hereby identify all documents that have already been identified or exchanged in the discovery process as documents which may be used in the deposition pursuant to Rule 30 (j), SCRCP.

CALLISON TIGHE & ROBINSON, LLC

Demetri K. Koutrakos
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com

ATTORNEYS FOR DEFENDANTS

March 9, 2017
1020.790/1026.031\DepoNotice-PL

RMC Bk 0339 Pg 208 : pg 1 *

BP0339208

MASTER'S DEED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TO ALL WHOM THESE PRESENTS SHALL CONCERN;

I, MIKELL R. SCARBOROUGH, MASTER IN EQUITY FOR CHARLESTON COUNTY, in the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Charleston County between Earline Nelson v. Clyde Hamilton et al., Case No.2010-CP-10-2929 by an Order dated March 27, 2013, it was ordered, inter alia, that the contract of sale dated February 28, 2013 be approved and that this Court issue a Master's Deed to the buyer, and

NOW THEREFORE KNOW ALL PERSONS. That I, the undersigned, as Master in Equity for Charleston County, pursuant to the foregoing and in consideration of the sum of One Hundred Eleven Thousand Six Hundred and 00/100 ($111,600.00), the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto CARPENTER BRASELTON, LLC, its successors and assigns, the following described property, to wit:

SEE EXHIBIT "A" ATTACHED HERETO
FOR DESCRIPTION OF PROPERTY

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the property belonging or in any wise incident or appertaining; and the reversions and remainders, rents, issues and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them.

TO HAVE AND TO HOLD the property, with its hereditaments, privileges, and appurtenances, unto Carpenter Braselton, LLC, its successors and assigns.

CH - L427

DODDS and HENNESSY, L.L.P.
ATTORNEYS AT LAW
973 HOUSTON NORTHCUTT BLVD.
SUITE 101
MOUNT PLEASANT, SC 29464

DEFENDANT'S EXHIBIT 2

IN WITNESS WHEREOF, I, the undersigned Master in Equity, under and by virtue of the said Order have hereunto set my Hand and Seal this the 8 day of May, 2013

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Jeanette Weathers

Jeffrey R. McDaniel

MASTER IN EQUITY FOR CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared the above witness and made oath that (s)he saw Mikell R. Scarborough, Master in Equity for Charleston County sign, seal, and deliver the within Deed, and that deponent together with the other witness signed their names as witnesses thereto.

SWORN to before me this
8 day of May, 2013.

Jeffrey R. McDaniel **(SEAL)**
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11/27/2022

RMC Bk 0339 Pg 208 : pg 3 *

EXHIBIT "A"

All that piece, parcel or tract of land containing 5.53 Acres, more or less, situate, lying and being on James Island, in Charleston County, South Carolina, and being delineated on a plat prepared by Berenyi, Incorporated, bearing the legend "CRITICAL LINE/BOUNDARY PLAT SHOWING A 5.53 ACRE WOODED TRACT OF LAND OWNED BY ERLEEN NELSON, LOCATED ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA", dated April 15, 2002, and recorded in the RMC Office for Charleston County in Plat Book DD, page 331; the said tract having such easurements, courses, buttings, boundings, and distances as by reference to said plat will show.

THE tax map number is 341-00-00-028.

THE Grantee's address is PO Box 1978, Englewood, FL 34295.

Being the same premises conveyed to Earline Nelson in a warranty deed of Virginia Gadsden, dated June 25, 1988, and recorded on June 29, 1988, in Book X-175, at Page 259, in the Charleston County R. M. C. Office; in a warranty deed of Juanita Powers, dated June 25, 1988, and recorded on June 29, 1988, in Book X-175, at Page 369, in the Charleston County R. M. C. Office; in a warranty deed of Vernell Haynes, dated November 7, 1988, and recorded on November 21, 1988, in Book T-179, at Page 235, in the Charleston County R. M. C. Office; and in a warranty deed of Florence B. Jones, dated December 28, 1987, and recorded on December 31, 1987, in Book N-171, at Page 193, in the Charleston County R. M. C. Office.

RMC Bk 0339 Pg 208 ; pg 4 *

STATE OF SOUTH CAROLINA]
COUNTY OF CHARLESTON]

AFFIDAVIT

[DATE OF TRANSFER TITLE
[CLOSING DATE: May 17, 2013

PERSONALLY appeared before me the undersigned, who being duly swom, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property being transferred by **MIKELL R. SCARBOROUGH, AS MASTER-IN-EQUITY FOR CHARLESTON COUNTY to CARPENTER BRASELTON, LLC on May 17, 2013.**

3. Check one of the following: ***The DEED is***
   (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   (c) ___ EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip item 4-7, and go to item 8 of this affidavit.)_____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 111,600.00
   (b) ___ The fee is computed on the fair market value of the realty which is $_____.
   (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____

5. Check YES___ or NO ** to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____

6. The DEED Recording Fee is computed as follows:
   (a) $ 111,600.00 the amount listed in item 4 above.
LESS (b) $ 0.00 the amount listed in item 5 above no amount place zero).
TOTAL(c) $ 111,600.00 Subtract Line 6(b) from Line 6(a)and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Lawrence A. Dodds, Jr., Closing Attorney
(Representative connected with this transaction)

Sworn to before me this 17th
day of May , 2013.

Notary Public for South Carolina
My Commission Expires: 06/30/16

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
DODDS & HENNESSY, L.L.P.
ATTORNEYS AT LAW
P.O. BOX 298
CHARLESTON SC 29402

RECORDED

Date:	June 18, 2013
Time:	2:48:35 PM

Book	Page	DocType
0339	208	Mas/Con

Charlie Lybrand, Register
Charleston County, SC

MAKER:
NELSON EARLINE

RECIPIENT:
CARPENTER BRASELTON LLC

Original Book:

Original Page:

Note:

# of Pages: 5

Recording Fee	$	10.00
State Fee	$	291.20
County Fee	$	123.20
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	424.40

DRAWER: Drawer 4
CLERK: LRR

AUDITOR STAMP HERE
RECEIVED FROM RMC
JUN 20 2013
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

UPDATED
PID VERIFIED BY ASSESSOR
REP JUN 20 2013
DATE ASTRJB
28

0336	208	06/18/2013	5
Book	Page	Recorded Date	# Pgs

		D	14:48:35
Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

RMC Bk 0339 Pg 208 : pg 5 *

REFERENCES

1 PLAT OF 3 6 ACRE PROPERTY OF ESTATE OF SOLOMAN DELANEY ABOUT TO BE CONVEYED TO CHRISTOPHER DELANEY LOCATED ON JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA SURVEYED ON DECEMBER 5 1983 BY HAGER E METTS R L S NO 4183

2 PLAT OF THE SUBDIVISION OF A 11 95 ACRE TRACT (5 95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS LOCATED ON JAMES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA SURVEYED ON AUGUST 8 1989 BY F ELLIOT QUINN III S C R L S NO 10292 AND RECORDED ON DECEMBER 31 1990 IN BOOK G PAGE 710

3 CHARLESTON COUNTY TAX MAP NUMBER 341-00-00

NOTES

BK 0 412PG823

1 THIS PROPERTY IS LOCATED IN FLOOD ZONE A5, AS PER F E M A MAP COMMUNITY PANEL NUMBER 455413 0361G, REVISED JULY 15 1988

2 AREA WAS DETERMINED BY COORDINATE METHOD

3 CHARLESTON COUNTY TMS 341-00-00-028

4 PROPERTY IS ZONED R S L

5 ROPER ROAD IS COUNTY MAINTAINED

6 ANY FURTHER SUBDIVISION OF THIS PARCEL OR ROAD CONSTRUCTION OT EXTENSION OF THE EXISTING ROADS SHOWN HEREON, SHALL REQUIRE COMPLIANCE WITH THE CHARLESTON COUNTY ZONING AND LAND DEVELOPMENT REGULATIONS BEFORE CHARLESTON COUNTY ACCEPTS
ANY DEDICATIONS OF ROADS INTO THE COUNTY ROAD SYSTEM THE PROPERTY OWNER SHALL CONSTRUCT THE ROADS TO THE COUNTY OF CHARLESTON STANDARDS

7 ACCESS IS PRIVATELY OWNED AND MAINTAINED AND WILL BE PROVIDED IN CONFORMANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE ZONING AND LAND DEVELOPMENT REGULATIONS

8 IT IS HEREBY EXPRESSLY UNDERSTOOD BY THE PROPERTY OWNER DEVELOPER OR ANY SUBSEQUANT PURCHASER OF ANY LOTS SHOWN ON THE PLAT THAT THE COUNTY OF CHARLESTON IS NOT RESPONSIBLE FOR THE MAINTANENCE OF THE STREETS ROAD COMMON AREAS DRAINAGE SYSTEMS AND ANY OTHER MUNICIPAL SERVICES WHICH INCLUDE BUT NOT LIMITED TO GARBAGE DISPOSAL
PUBLIC SEWAGE FIRE PROTECTION OR EMERGENCY MEDICAL SERVICE

9 BE AWARE THAT THE COUNTY OF CHARLESTON IS NOT RESPONSIBLE FOR DRAINAGE AND FLOODING PROBLEMS RELEVANT TO THE REAL PROPERTY AND EMERGENCY VEHICLES MAY HAVE DIFFICULTY ACCESSING THE PROPERTY

10 NO PUBLIC FUNDS SHALL BE USED FOR THE MAINTANENCE OF THE ROADS SHOWN ON THE PLAT

11 THIS APPROVAL IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO MAINTAIN THIS INGRESS – EGRESS EASEMENT UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS AND ACCEPTED FOR MAINTANENCE BY CHARLESTON COUNTY COUNCIL

APPROVAL STAMPS

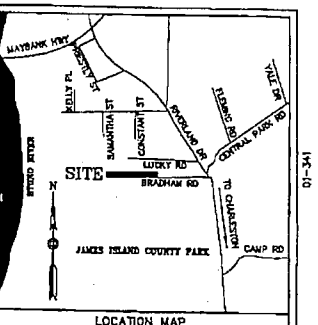
APPROVED FINAL PLAT
John Blakely For Jennifer Miller
Director of Planning
Charleston County Planning Commission
18934 App #
JULY 18, 2002 Date

Charleston South Carolina
Office of Register Mesne Conveyance
Plat recorded this 19th day of July, 2002 at 8:46 o clock in Plat Book DD Page 331 and tracing cloth copy filed as File 2 Drawer 4 Folder 81 Drawing No 46
Original plat (a White Print) delivered to Chas Co Planning Board.
Register Mesne Conveyance

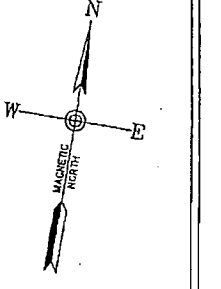
THE AREA SHOWN ON THIS PLAT IS GENERAL REPRESENTATION OF DHEC–OCRM PERMIT AUTHORITY ON THE SUBJECT PROPERTY CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME BY GENERALLY DELINEATING THE PERMIT AUTHORITY OF THE DHEC–OCRM, THE OFFICE OF OCRM IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT

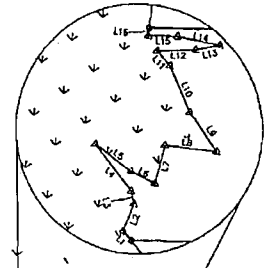
04-24-02
DATE SIGNATURE

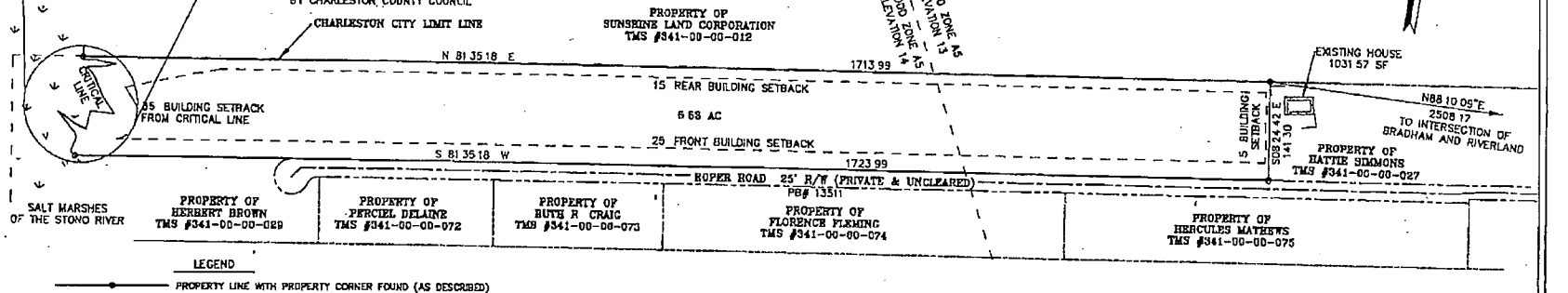
THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR THREE YEARS FROM THE DATE OF THIS SIGNATURE SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE



LOCATION MAP
N T S







LEGEND

- PROPERTY LINE WITH PROPERTY CORNER FOUND (AS DESCRIBED)
- PROPERTY LINE WITH PROPERTY CORNER SET (3/4 REBAR)
- RIGHT OF WAY LINE
- CENTER LINE
- ADJACENT PROPERTY LINE
- EASEMENT LINE
- CITY LIMIT LINE

LINE TABLE		
LINE	LENGTH	BEARING
L1	8 64'	N49 38 41"W
L2	19 38'	N12 43 18"E
L3	8 51	N21 11 10"W
L4	39 74'	N47 38 04"W
L5	30 26	S62 53'56"E
L6	18 20	S73 08'46"E
L7	28 20	N05 44 39"E
L8	34 88	N87 36 16"E
L9	31 80	N42 38 35"W
L10	33 53	N32 54 32"W
L11	13 09	N51 12 04"W
L12	25 89	N78 48 08"E
L13	18 37	N70 02 10"E
L14	28 73	N86 12 26"W
L15	19 91'	S82 00 56"W
L16	5 09	N02 25 54"W

THIS LOT DOES MEET MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB SURFACE DISPOSAL SYSTEM ONLY

CRITICAL LINE/BOUNDARY PLAT

SHOWING A 5 53 ACRE, WOODED TRACT OF LAND OWNED BY ERLEEN NELSON, LOCATED ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA

DATE APRIL 15, 2002

SCALE 1" = 100'

100 0 50 100
(IN FE
1 inch =

BERENYI INCORPORATED
ENGINEERS ARCHITECTS LAND SURVEYORS
COMMITTED TO HELPING YOU ACHIEVE YOUR GOALS THROUGH INNOVATIVE SOLUTIONS EXCEPTIONAL SERVICE AND TEAMWORK
124 SEVEN FARMS DRIVE
CHARLESTON SOUTH CAROLINA 29492
TELE (843)884-2000 FAX (843)884-2001

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR No 21228

4-15-02

SMYTHE R. GOFORTH, JR. PLS 21228

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION BERENYI INCORPORATED No C00817

DEFENDANT'S EXHIBIT 3

500

DEFENDANT'S EXHIBIT 4

501

DEFENDANT'S
EXHIBIT
5

BP0440255

PGS: 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

A-9763-P
TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT I, **HERBERT BROWN** (**"Grantor"**), in the State aforesaid for and in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND and 00/100 ($170,000.00) DOLLARS, to him in hand paid at and before the sealing of these presents by **CARPENTER BRASELTON, LLC** the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, subject to those matters set forth on Exhibit "A", unto the said **CARPENTER BRASELTON, LLC, ("Grantee")**, its successors and assigns, the following described real property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to said premises belonging or in any wise incident appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned, subject to those matters set forth in Exhibit "A", unto the Grantee, its successors and assigns, forever.

AND, subject to those matters set forth in Exhibit "A", the Grantor does hereby bind the Grantor and Grantor's heirs, executors, administrators and assigns to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns, against Grantor and Grantor's heirs and assigns, and every person whomsoever lawfully claiming or to claim the same or any part thereof.

DODDS HENNESSY & STITH, LLP
ATTORNEYS AT LAW
973 HOUSTON NORTHCUTT BLVD.
SUITE 101
MOUNT PLEASANT, SC 29464

DEFENDANT'S EXHIBIT
9

WITNESS the Grantor's hands and seals this 10 day of Nov, 2014.

SIGNED, sealed and delivered
in the presence of:

(WITNESS #1)

(WITNESS #2)

HERBERT BROWN

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 10 day of Nov, 2014 by the Grantors, HERBERT BROWN, who executed the within written deed and is a person known to me.

Notary Public for South Carolina
My Commission Expires: 12-9-25

EXHIBIT "A"
LOT C-5, PARCEL 1, ROPER ROAD, JAMES ISLAND

ALL that certain lot, piece or parcel of land, situate, lying and being at the end of Roper Road, James Island County of Charleston, State of South Carolina, measuring and containing 31,845.3 square feet of highland and six (6) acres of marshland, more or less, and known and designated as **LOT C-5** on a plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

SUBJECT TO all easements, restrictions and rights-of-way of record.

NO WARRANTY is given as to land lying below the mean highwater mark of any adjacent rivers, creeks or streams.

BEING the same property conveyed to Herbert Brown by deed of Virginia R. Brown a/k/a Virginia Roper Brown, dated February 22, 1995 and recorded February 22, 1995 in the RMC Office for Charleston County in Book U-252 at Page 034; and by confirmatory deed of Mikell R. Scarborough, Master-in-Equity for Charleston County, dated June 15, 2007 and recorded July 10, 2007 in the RMC Office for Charleston County in Book T-631 at Page 283.

TMS Number: 341-00-00-029

Grantee's Address: P.O. BOX 671048
MARIETTA, GA 30066

STATE OF SOUTH CAROLINA]
COUNTY OF CHARLESTON]

AFFIDAVIT

(DATE OF TRANSFER OF TITLE)
(CLOSING DATE: 11/10, 2014)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred by **HERBERT BROWN** to **CARPENTER BRASELTON, LLC** on 11/10, 2014.
3. Check one of the following: ***The DEED is***
   (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   (c)___ EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip item 4-6, and go to item 7 of this affidavit.)_____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 170,000.00 .
   (b)___ The fee is computed on the fair market value of the realty which is $_____.
   (c)___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.
5. Check YES___ or NO___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____.
6. The DEED Recording Fee is computed as follows:
   (a) $170,000.00 the amount listed in item 4 above.
   LESS (b) $_____ the amount listed in item 5 above (no amount place zero).
   TOTAL (c) $170,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR.
8. Check if Property other than Real Property is being transferred on this Deed.
   (a) _____ Mobile Home
   (b) _____ Other
9. _____DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of_____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina: that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of_____deceased and that the grantee(s) therein are correct and confirm to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SIGNED: Herbert D Brown
HERBERT BROWN
(Grantor, Grantee, or Attorney that prepared this form)

Sworn to before me this 10 day of Nov 2014

Notary Public for South Carolina
My Commission Expires: 12-9-25

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
DODDS HENNESSY & STITH LLP
ATTORNEYS AT LAW
973 HOUSTON NORTHCUTT BLVD STE 101
MT. PLEASANT SC 29464

RECORDED

Date: November 12, 2014
Time: 2:29:09 PM

Book	Page	DocType
0440	255	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
BROWN HERBERT

RECIPIENT:
CARPENTER BRASELTON LLC

Note:

# of Pages: 5

Recording Fee	$	10.00
State Fee	$	442.00
County Fee	$	187.00
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	639.00

DRAWER: Drawer 1
CLERK: KLH

Original Book:

Original Page:

AUDITOR STAMP HERE
RECEIVED From RMC
NOV 13 2014
PETER J. TECKLENBURG
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MK
DATE 11/13/14
4

0440 Book
255 Page
11/12/2014 Recorded Date
5 # Pgs

Original Book
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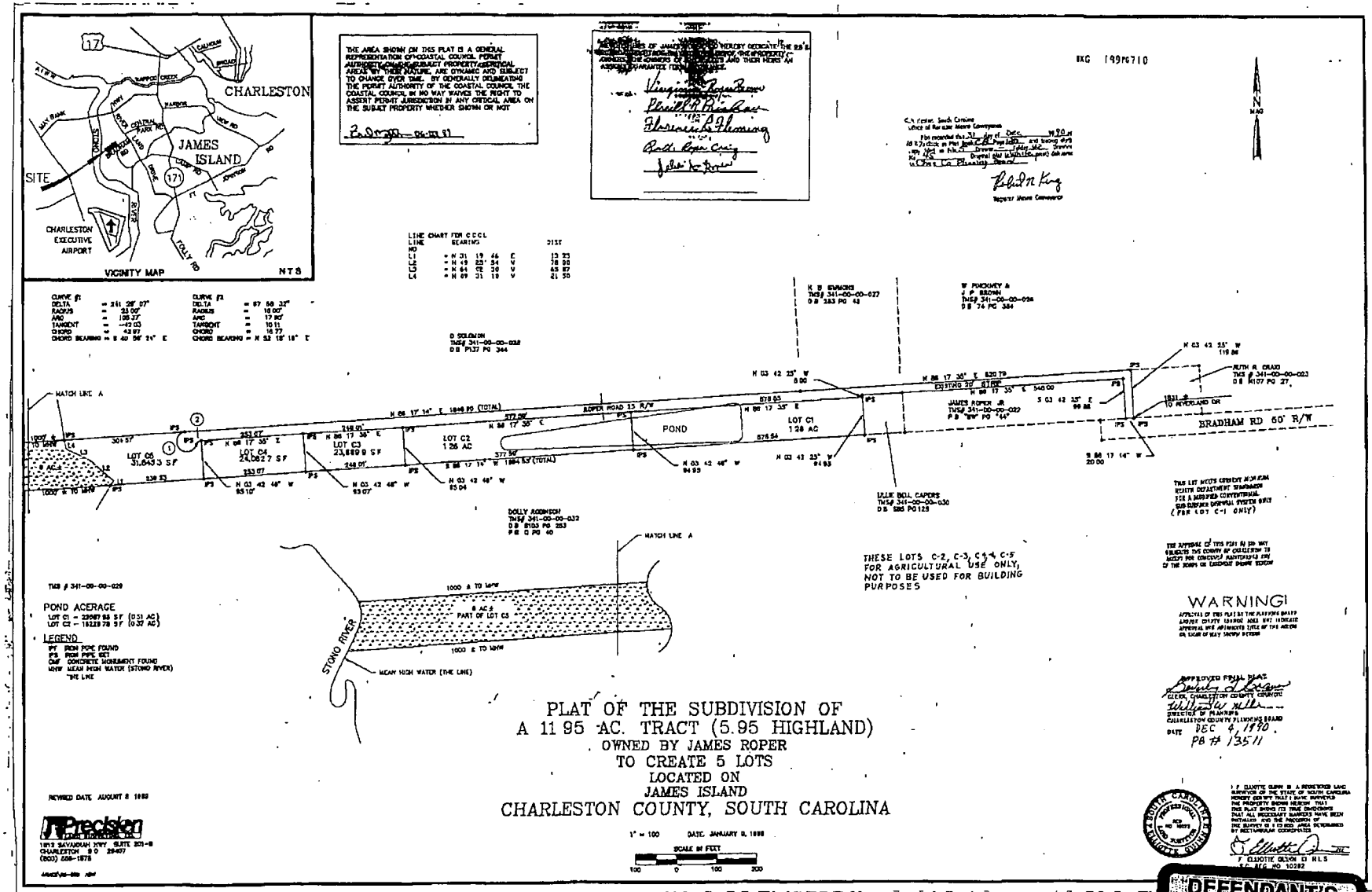
b Doc Type
14:29:09 Recorded Time


CHARLESTON
JAMES ISLAND
SITE
CHARLESTON EXECUTIVE AIRPORT
VICINITY MAP
NTS
THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF COASTAL COUNCIL PERMIT AUTHORITY CHANGE. SUBJECT PROPERTY AND CRITICAL AREAS IN THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERALLY DELINEATING THE PERMIT AUTHORITY OF THE COASTAL COUNCIL THE COASTAL COUNCIL IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY WHETHER SHOWN OR NOT
BKG 199P6710
LINE CHART FOR CCCL
CURVE #1
CURVE #2
D SOLOMON
TMS# 341-00-00-038
D B 7137 PG 344
K B EVANCHO
TMS# 341-00-00-027
D B 283 PG 43
W PONDWAY &
J P BROWN
TMS# 341-00-00-036
D B 76 PG 384
ROPER ROAD 33' R/W
POND
LOT C1
1.28 AC
LOT C2
1.26 AC
LOT C3
23,689.9 SF
LOT C4
24,062.7 SF
LOT C5
31,643.3 SF
JAMES ROPER JR
TMS# 341-00-00-022
P B "BW" PG "44"
EXISTING 20' R/W
BRADHAM RD 60' R/W
RUTH R. GRAD
TMS # 341-00-00-023
D B 4107 PG 27
1831 ft
TO NEWFOUND DR
LILLIE BELL CAPERS
TMS# 341-00-00-030
D B 585 PG 123
DOLLY ADDISON
TMS# 341-00-00-032
D B 8103 PG 253
P B C PG 40
MATCH LINE A
STONO RIVER
MEAN HIGH WATER (THE LINE)
1000 ± TO MHW
8 AC ±
PART OF LOT C3
TMS # 341-00-00-029
POND ACREAGE
LOT C1 - 33597.98 SF (0.51 AC)
LOT C2 - 19529.78 SF (0.32 AC)
LEGEND
IPF IRON PIPE FOUND
IPS IRON PIPE SET
CMF CONCRETE MONUMENT FOUND
MHW MEAN HIGH WATER (STONO RIVER) THE LINE
THESE LOTS C-2, C-3, C-4, C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES
THIS LOT MEETS CURRENT MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUBSURFACE SEWAGE DISPOSAL SYSTEM ONLY (FOR LOT C-1 ONLY)
WARNING!
APPROVED FINAL PLAT
CLERK, CHARLESTON COUNTY COUNCIL
DIRECTOR OF PLANNING
CHARLESTON COUNTY PLANNING BOARD
DATE DEC 4, 1990
PB # 135 11
REVISED DATE AUGUST 8 1990
Precision Surveying, Inc.
1813 SAVANNAH HWY SUITE 201-B
CHARLESTON S C 29407
(803) 556-1878
PLAT OF THE SUBDIVISION OF
A 11 95 AC. TRACT (5.95 HIGHLAND)
OWNED BY JAMES ROPER
TO CREATE 5 LOTS
LOCATED ON
JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
1" = 100 DATE: JANUARY 8, 1990
SCALE IN FEET
100 0 100 200
F ELLIOTTE OLSEN III R L S
S C REG NO 10282
DEFENDANT'S EXHIBIT
1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-1560
CARPENTER BRASELTON, LLC,	)	
Plaintiff,	)	
v.	)	
ASHLEY ROBERTS, JEREMY COOK, AND SALAHEDDINE EZZAOUDI,	)	
Defendants.	)	

2016 MAR 28 PM 3:04

COMPLAINT
(Non-Jury Trial)

The Plaintiff complaining of the Defendants would respectfully show the Court as follows:

1. Plaintiff is a limited liability company formed under the laws of the State of Georgia and authorized to transact business in South Carolina.
2. Plaintiff owns real property in Charleston County, South Carolina, including a parcel of property identified as Lot C-5 on a plat made by F. Elliotte Quinn, III, which was recorded on December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County.
3. Lot C-5, which is located on James Island at the end of Roper Road, contains 31,845.3 square feet of highland and six (6) acres of marshland.
4. Plaintiff purchased Lot C-5 from Herbert Brown on November 10, 2014, for $170,000.
5. Upon information and belief, Defendants Ashley Roberts and Jeremy Cook are residents of the State of California.

DEFENDANT'S EXHIBIT 8

6. Defendants Roberts and Cook own real property in Charleston County, South Carolina, including parcels of real property identified as Lot C3 and Lot C2 on a plat made by F. Elliotte Quinn, III, which was recorded on December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County.

7. Upon information and belief, Lot C2 was purchased by Defendants Roberts and Cook on September 6, 2007, from John W. Fleming for $61,000.

8. Upon information and belief, Lot C3 was purchased by Defendants Roberts and Cook on September 6, 2007, from Ruth R. Craig for $40,000.

9. Defendant Salaheddine Ezzaoudi, upon information and belief, is a resident and citizen of Charleston County, South Carolina.

10. Defendant Ezzaoudi owns real property in Charleston County, South Carolina, including a parcel of real property identified as Lot C4 on a plat made by F. Elliotte Quinn, III, which was recorded on December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County.

11. Lot C3 was purchased by Defendant Ezzaoudi on May 28, 2013, for $45,000 from Perceil R. Delaine, James A. Roper, III, Mildred R. Anderson, Ruby Roper, and Raymond Roper.

12. The deeds conveying Lots C2, C3, C4, and C5 to the Defendants and Plaintiff specifically state that the conveyances are being made subject to all restrictions, reservations, easements, and other limitations that appear of record, including on the recorded plats.

13. Each of the deeds conveying Lots C2, C3, C4, and C5 to the Defendants and Plaintiff specifically reference a "'Plat of the Subdivision of 11.95 acre tract (5.95 highland)

owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina' made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130, RMC Office for Charleston County" (hereinafter referred to as "The Plat").

14. The Plat, which has been of public record since December 31, 1990, contained a notation near the center of the page in all capital letters that reads:

"THESE LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES."

15. No document or record has been filed in the RMC Office for Charleston County purporting to amend, waive, or rescind the agricultural restriction stated in The Plat and referenced in the deeds of the parties.

16. Plaintiff purchased Lot C5 in reliance on the agricultural restriction stated in The Plat that created and limited the use of Lots C2, C3, C4, and C5.

17. Since the purchase of Lot C3 by Defendants Roberts and Cook, a residential home has been constructed on Lot C3.

18. Defendant Ezzaoudi is actively marketing Lot C4 for sale to the public.

19. Upon information and belief, Defendant Ezzaoudi plans to sell Lot C4 to a purchaser who will have intentions of building on Lot C4.

FOR A FIRST CAUSE OF ACTION
(Permanent Injunction)

20. Plaintiff repeats the allegations of the previous paragraphs as if restated herein verbatim.

21. The Defendants' lots are burdened by a restriction that the lots not be used for building purposes and be limited to agricultural uses.

22. While Plaintiff's lot is also burdened, it derives a benefit from the restriction burdening the lots.

23. Among other benefits, the restriction allows Plaintiff to experience and benefit from the views, peace, and comfort of the undeveloped properties.

24. Plaintiff has a reasonable concern and fear that the Defendants or subsequent purchasers will attempt to use the lots for non-agricultural purposes, including building purposes.

25. Should the Defendants build on or use the remaining Lots for other than agricultural purposes, Plaintiff will be left without an adequate remedy at law because the measure of Plaintiff's damages would be impossible to calculate.

26. The damage to Plaintiff if Defendants use the Lots for purposes other than agricultural purposes will be irreparable.

27. Equity requires that the Defendants be restrained from building on the remaining lots.

28. The Court should grant a permanent injunction prohibiting Defendants from any further building upon or other non-agricultural use of the undeveloped lots.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

29. Plaintiff repeats the allegations of the previous paragraphs as if restated herein verbatim.

30. Plaintiff brings this action pursuant to section 15-53-30 of the South Carolina Code seeking a declaration as to the restriction stated on The Plat limiting the use of Lots C2, C3, C4, and C5 to agricultural use only.

Requested Declarations

31. That The Plat contains a restriction that limits that use of Lots C2, C3, C4, and C5 to agricultural use and prohibits the use of said lots for building purposes.

32. That Defendants purchased their property subject to all restrictions and limitations of record, including any recorded plats.

33. That the deeds conveying title to the Defendants specifically referenced The Plat.

34. That the restriction stated on The Plat has not been released, waived, amended, or abandoned.

35. That The Plat's restriction on the use of Lots C2, C3, C4, and C5 prohibits the Defendants and subsequent purchasers from using the property for any further non-agricultural purpose, including building purposes.

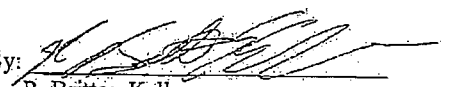
WHEREFORE, the Plaintiff prays as follows:

I. That the Court issue a permanent injunction forbidding the Defendants from building on the remaining lots or using the lots for any non-agricultural purposes;

II. That the Court issue the declarations requested above; and

III. That the Court award any further relief that it deems appropriate.

ROSEN, ROSEN & HAGOOD, LLC

By: 

R. Britton Kelly
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
March 28, 2016.

March 7, 2017

Demetri K. Koutrakos
Callison Tighe & Robinson, LLC
PO Box 1390
Columbia, SC 29202

CHARLESTON
COUNTY
SOUTH CAROLINA
PLANNING DEPARTMENT
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
843.202.7200, 1.800.524.7832 Fax: 843.202.7222
Joel Evans, PLA, AICP - Director

RE: FOIA REQUEST

Jim,

This letter is a response to the Freedom of Information Act (FOIA) emailed request received on December 7, 2016 seeking the following information:

..." All documents related to Planning Board/Commission Case No. 13511"

Any public records that are not exempt from disclosure that are responsive to your request has been researched and copied at no charge. Due to an earlier machine malfunction for retrieval of requested documents; all copies are being sent by US Postal Service. Enclosed are the requested copies and if there are any future questions, please feel free to contact this office at 843-202-7214.

Sincerely,

Lisa
Lisa McCray, Planner II
Support Manager
Permitting & Code Enforcement Office

RECEIVED
MAR - 9 2017

DEFENDANT'S EXHIBIT 9

CHARLESTON COUNTY PLANNING DEPARTMENT
SUBDIVISION TRANSMITTAL
COVER SHEET

MEETING DATES

Planning Board-November 26 1990
Planning & Development-November 29, 1990
County Council Meeting-December 4, 1990

#13404 LANDS OF DANIEL BROWN (WADMALAW ISLAND)

VOTE: RECOMMENDATIONS:

2-APP 0-DIS PLANNING COMMITTEE--APPROVAL
5-APP 0-DIS PLANNING BOARD------APPROVAL (Stipulation #5)

*****

Planning Department------APPROVAL
Public Works Department--APPROVAL
Health Department--------APPROVAL

#14231 LANDS OF SALLIE J. FONTAINE (EDISTO ISLAND)

VOTE: RECOMMENDATIONS:

2-APP 0-DIS PLANNING COMMITTEE--APPROVAL
5-APP 0-DIS PLANNING BOARD------APPROVAL (Stipulation #5)

*****

Planning Department------APPROVAL
Public Works Department--APPROVAL
Health Department--------APPROVAL

#13511 LANDS OF JAMES ROPER (JAMES ISLAND)

VOTE: RECOMMENDATIONS:

2-APP 0-DIS PLANNING COMMITTEE--APPROVAL
0-APP 5-DIS PLANNING BOARD------DISAPPROVAL (Stipulation #8)

*****

Planning Department------DISAPPROVAL
Public Works Department--DISAPPROVAL
Health Department--------DISAPPROVAL

Chas. Planning Dept. FOIA Response 3/7/17 002

AGENDA

CHARLESTON COUNTY PLANNING BOARD

NOVEMBER 26, 1990

SUBDIVISION REQUESTS

			PG
A.		RECOMMENDED FOR APPROVAL:	
	1. #13404	Lands of Daniel Brown	1
	2. #14231	Lands of Sallie J. Fontaine	2
B.		RECOMMENDED FOR DISAPPROVAL:	PG
	1. #13511	Lands of James Roper	3

I

Chas. Planning Dept. FOIA Response 3/7/17 003

STANDARD SUBDIVISION STIPULATIONS

1. Further subdivision of the lots under review will not be given favorable consideration until such time as any additional lots created therefrom meet all requirements.

2. This approval in no way assures approval by the Health Department of individual lots where private sewer systems are to be used.

3. This approval in no way obligates the County of Charleston to accept for continued maintenance any of the roads and/or easements shown on the plat.

4. WARNING! Approval of this plat by the Planning Board and/or County Council does not indicate approval nor adjudicate title of the access or right-of-way shown hereon. (This note to be placed on plat.)

5. This/these lot(s) do(es) meet minimum Health Department Standards for a modified conventional sub-surface disposal system only.

6. This approval in no way obligates the County of Charleston to maintain this right-of-way until it has been constructed to county standards.

7. This/these lot(s) do(es) not meet minimum Health Department requirements.

8. For Agricultural Use Only; Not to be used for Building Purposes

Chas. Planning Dept. FOIA Response 3/7/17 004

AGENDA
November 26, 1990

#13404 - Lands of Daniel Brown

Lots: 1
Acres: 3.69

Wadmalaw Island
Applicant: James Penington

1. Planning Staff & Public Works Department recommend APPROVAL with the acceptance of a 12.5' drainage easement being dedicated to the public as shown on the plat.

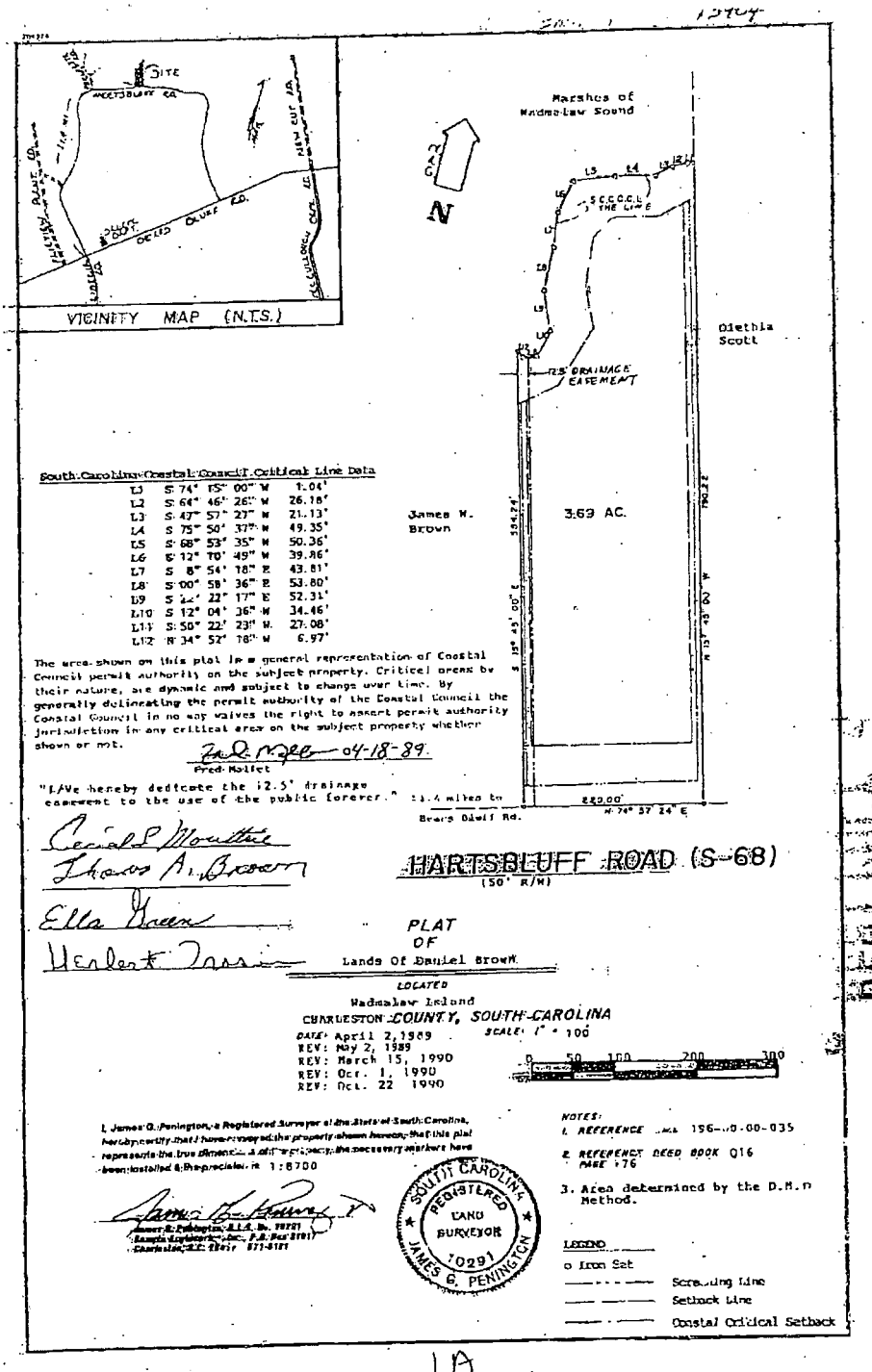
2. Health Department recommends APPROVAL.

Stipulation #5

NOTE: This plat is in accordance with the Wadmalaw Island Land Use Plan for R-1 zone.

-1-

Chas. Planning Dept. FOIA Response 3/7/17 005



1A

Chas. Planning Dept. FOIA Response 3/7/17 006

AGENDA
November 26, 1990

#14231 - Lands of Sallie J. Fontaine

Edisto Island
Applicant: David Spell

Lots: 1
Acres: 6.62

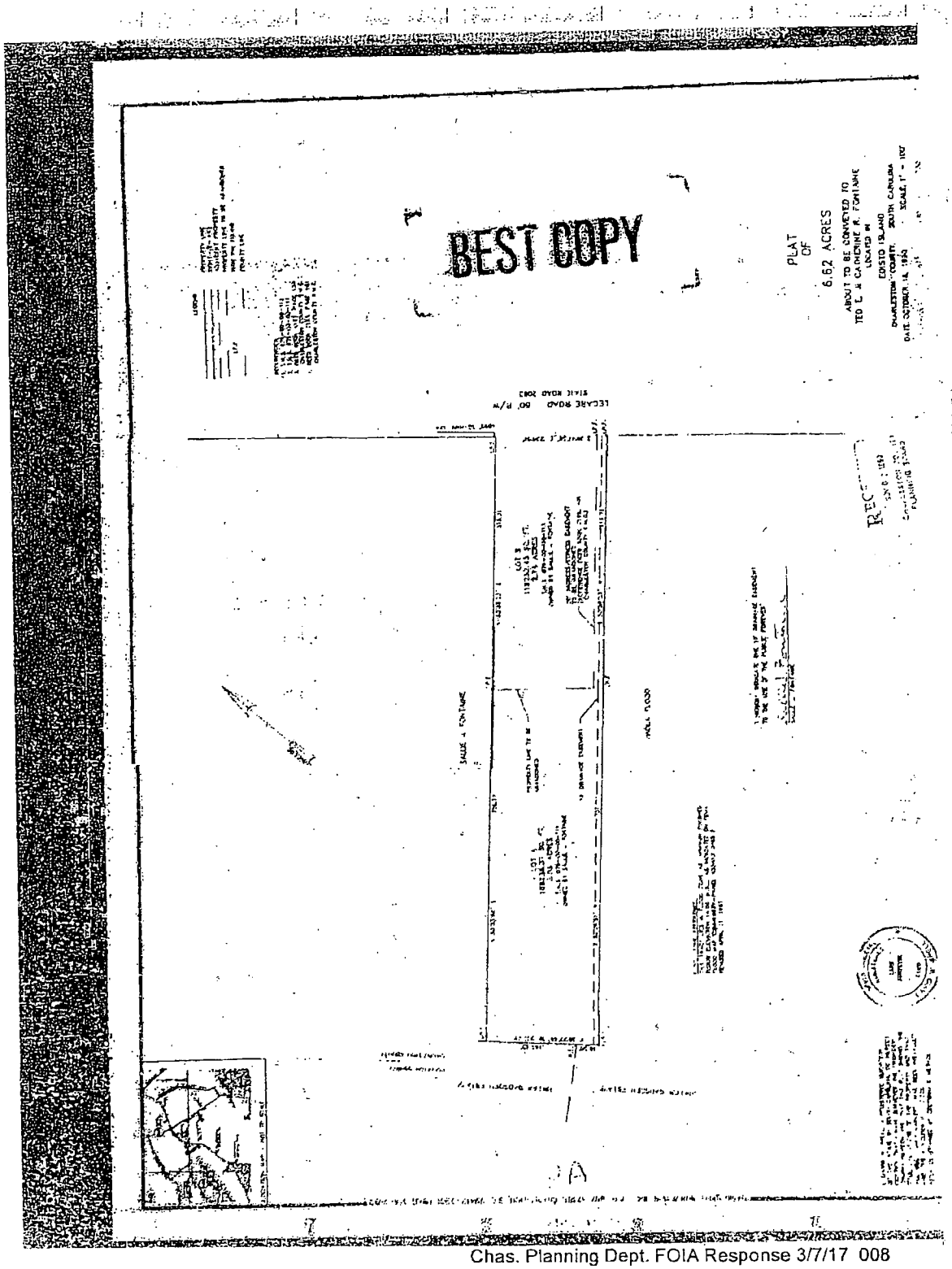
1. Planning Staff & Public Works Department recommend APPROVAL with the acceptance of a 10' drainage easement being dedicated to the public as shown on the plat.

2. Health Department recommends APPROVAL provided the following statement is placed on the plat. "This lot meets minimum Health Department Standards for a modified conventional sub-surface disposal system only."

Stipulation #5

-9-

Chas. Planning Dept. FOIA Response 3/7/17 007



Chas. Planning Dept. FOIA Response 3/7/17 008

AGENDA
November 26, 1990

#13511 - Lands of James Roper

James Island
Applicant: Keith Ruddy

Lots: 5
Acres: 11.95

1. Planning Staff & Public Works Department recommend DISAPPROVAL of this application and the granting of variances from the Sections III B-12, III E-12, and III E-6. A variance from Section III B-12 would allow for the creation of a road right-of-way which exceeds 800' in length. A variance from Section III E-12 would allow for the creation of 5 lots which do not front on a State or County approved road and a variance from Section III E-6 would allow for the creation of lots which do not meet minimum soil requirements for any type subsurface sewer disposal system. A 25' right-of-way is being dedicated to the property owners to be known as Roper Road as shown on the plat.

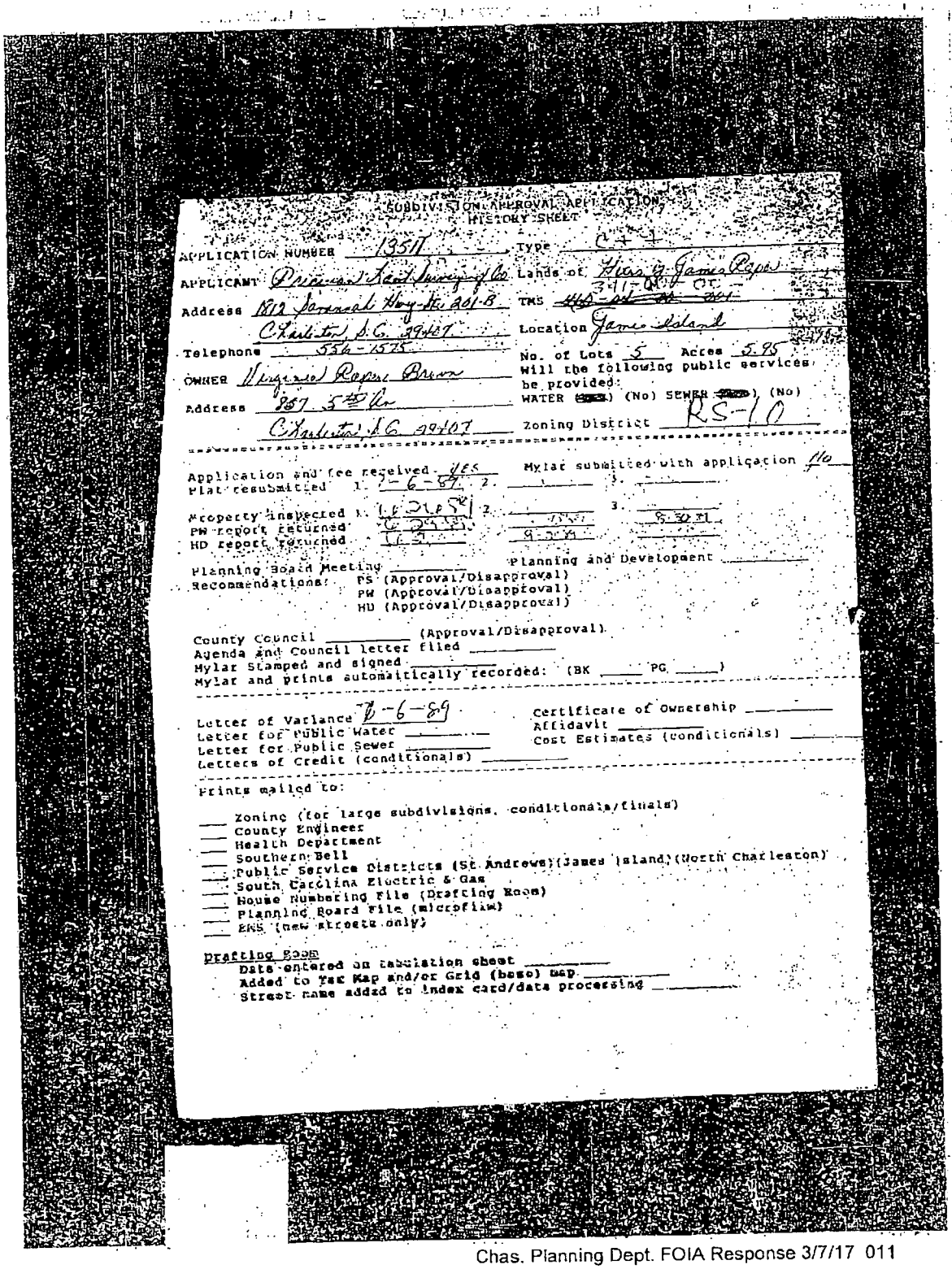
2. Health Department recommends DISAPPROVAL.

Stipulation #8

3

Chas. Planning Dept. FOIA Response 3/7/17 009

Chas. Planning Dept. FOIA Response 3/7/17 010



SUBDIVISION APPROVAL APPLICATION
HISTORY SHEET

APPLICATION NUMBER 1351T
APPLICANT Pringle Land Surveying Co
Address 812 Savannah Hwy Ste 201-B
Charleston S.C. 29407
Telephone 556-1575
OWNER Virginia Ropar Brown
Address 857 5th Ave
Charleston S.C. 29407

Type C + I
Lands of Heirs of James Ropar
341-00-00-001
TMS [illegible]
Location James Island
No. of Lots 5 Acres 5.95
Will the following public services be provided:
WATER (Yes) (No) SEWER (Yes) (No)
Zoning District RS-10

Application and fee received Yes
Plat resubmitted 1. 7-6-89 2. ____ 3. ____
Mylar submitted with application No

Property inspected 1. 11-21-89 2. ____ 3. 5-30-91
PW report returned 12-29-89 ____ ____
HD report returned 11-9-89 9-5-91 ____

Planning Board Meeting ____ Planning and Development ____
Recommendations: PB (Approval/Disapproval)
PW (Approval/Disapproval)
HD (Approval/Disapproval)

County Council ____ (Approval/Disapproval)
Agenda and Council letter filed ____
Mylar Stamped and signed ____
Mylar and prints automatically recorded: (BK ____ PG ____)

Letter of Variance 7-6-89
Letter for Public Water ____
Letter for Public Sewer ____
Letters of Credit (conditionals) ____
Certificate of Ownership ____
Affidavit ____
Cost Estimates (conditionals) ____

Prints mailed to:

___ Zoning (for large subdivisions, conditionals/finals)
___ County Engineer
___ Health Department
___ Southern Bell
___ Public Service Districts (St. Andrews)(James Island)(North Charleston)
___ South Carolina Electric & Gas
___ House Numbering File (Drafting Room)
___ Planning Board File (microfilm)
___ EMS (new streets only)

Drafting Room
Data entered on tabulation sheet ____
Added to Tax Map and/or Grid (base) map ____
Street name added to index card/data processing ____

Chas. Planning Dept. FOIA Response 3/7/17 011

Subdivision Application

OFFICE USE ONLY
DATE RECEIVED June 22, 1989
APPLICATION NO. 1351
RECEIPT NO. 902129
TYPE OF APP.

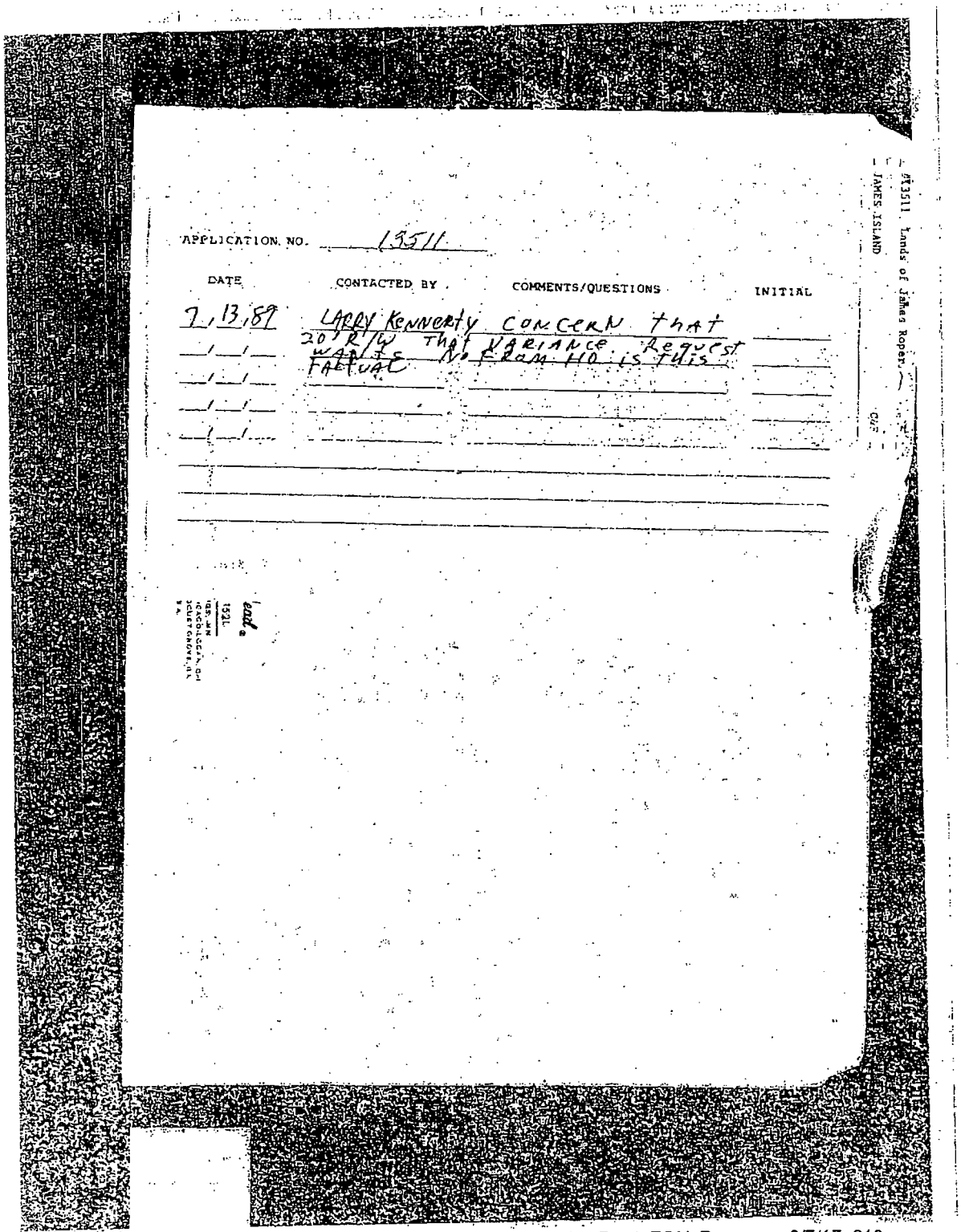
1. APPLICANT: PRECISION LAND SURVEYING CO.
   MAILING ADDRESS: 1812 Savannah Hwy. Ste 201B
   Charleston, S.C. 29407
   PHONE: 556-1575
2. PRESENT OWNER: Heirs of James Roper
   MAILING ADDRESS: c/o Virginia Roper Brown
   837 5th Ave.
   ZIP CODE: Charleston, S. C. 29407
3. LOCATION (PARISH) OF PROPERTY: James Island
4. TAX MAP NUMBER: 460-04-04-001
5. NUMBER OF LOTS: 5 TOTAL ACREAGE: 5.95
6. IS PUBLIC WATER AVAILABLE (YES) (NO)
   IS PUBLIC SEWER AVAILABLE (YES) (NO)
7. ORIGINAL (OR MYLAR COPY) SUBMITTED (YES) (NO)

TO ELIMINATE UNNECESSARY DELAYS, PLEASE REMEMBER TO PLACE TIE DISTANCE ON PLAT!

STAMPED ORIGINAL MAY BE RELEASED TO:

COMMENTS: SENT TO APPLICANT [XXX]
LEFT IN SURVEYOR'S BOX [ ]

Chas. Planning Dept. FOIA Response 3/7/17 012

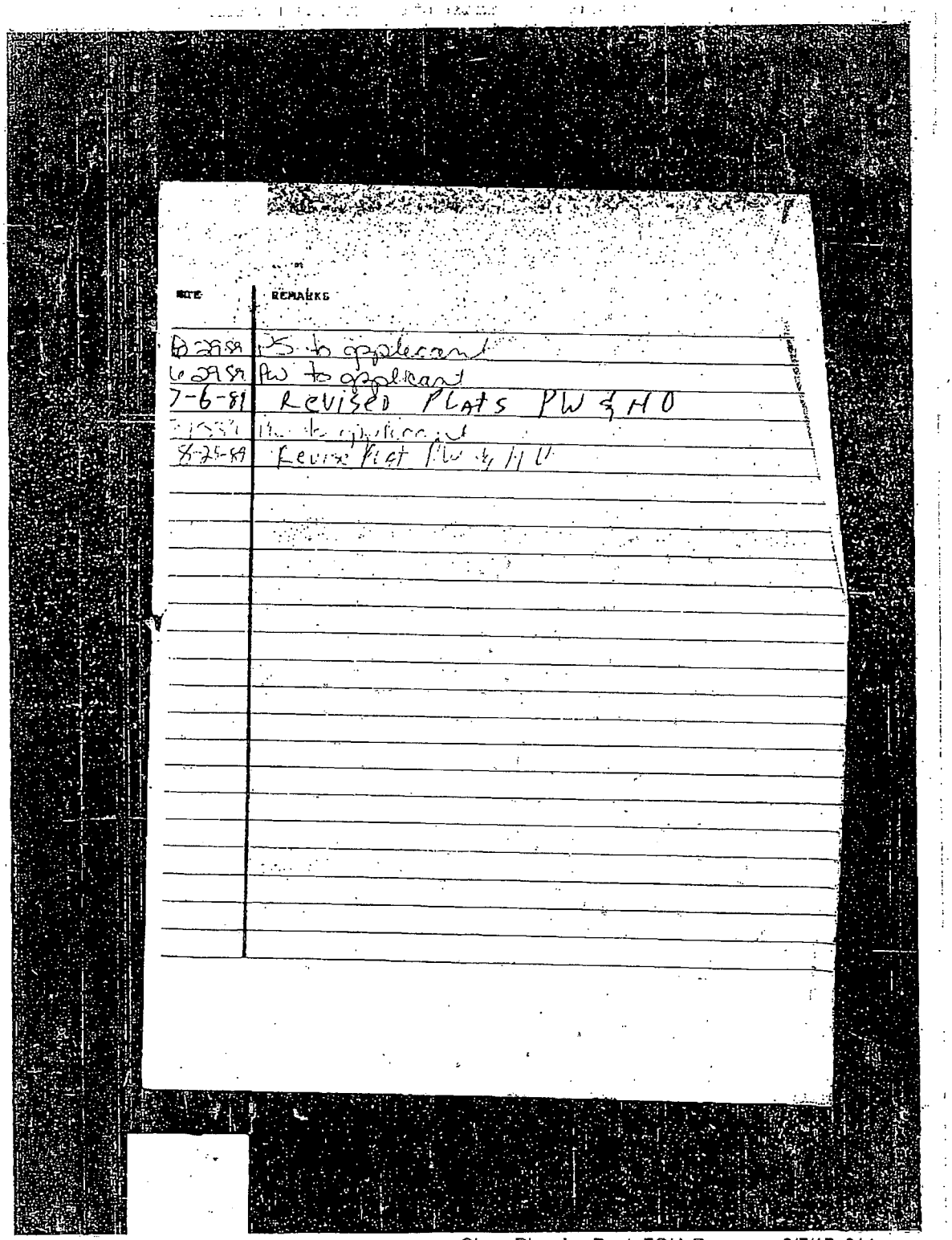


APPLICATION NO. 13511

DATE	CONTACTED BY	COMMENTS/QUESTIONS	INITIAL
7,13,89	Larry Kennerty	CONCERN that 20' R/W that VARIANCE Request WAIVE No Room HO is this FACTUAL	
__/__/__			
__/__/__			
__/__/__			
__/__/__			

#13511 Lands of James Ropes
JAMES ISLAND
CHE

Chas. Planning Dept. FOIA Response 3/7/17 013



DATE	REMARKS
6-29-81	JS to applicant
6-29-81	PW to applicant
7-6-81	REVISED PLATS PW & HO
[illegible]	[illegible] to applicant
8-25-81	Revise Plat PW & HO

Chas. Planning Dept. FOIA Response 3/7/17 014

...mbard - Chair
...Sayger, III - Vice Chair
...Condillon, III
...Kennedy
...M. Kerrison
...Mayhank
...Simmey
...Wallace, M.D.
Charles C. Wannamaker, M.D.

Beverly T. Craven, Clerk
723-6772

CHARLESTON COUNTY COUNCIL
O.T. WALLACE COUNTY OFFICE BUILDING
CHARLESTON, SOUTH CAROLINA

December 11, 1990

Precision Land Surveying
1812 Savannah Highway
Charleston, SC 29407

Re: #13511 - Lands of James Roper

Gentlemen:

County Council at their meeting on December 4, 1990 granted APPROVAL of variances from the Sections III B-12, III E-12, and III E-6. A variance from Section III B-12 would allow for the creation of a road right-of-way which exceeds 800' in length. A variance from Section III E-12 would allow for the creation of 5 lots which do not front on a State or County approved road and a variance from Section III E-6 would allow for the creation of lots which do not meet minimum soil requirements for any type subsurface sewer disposal system. A 25' right-of-way is being dedicated to the property owners to be known as Roper Road as shown on the plat.

Approval of this plat, includes the following stipulation:

For Agricultural Use Only; Not to be used for Building Purposes.

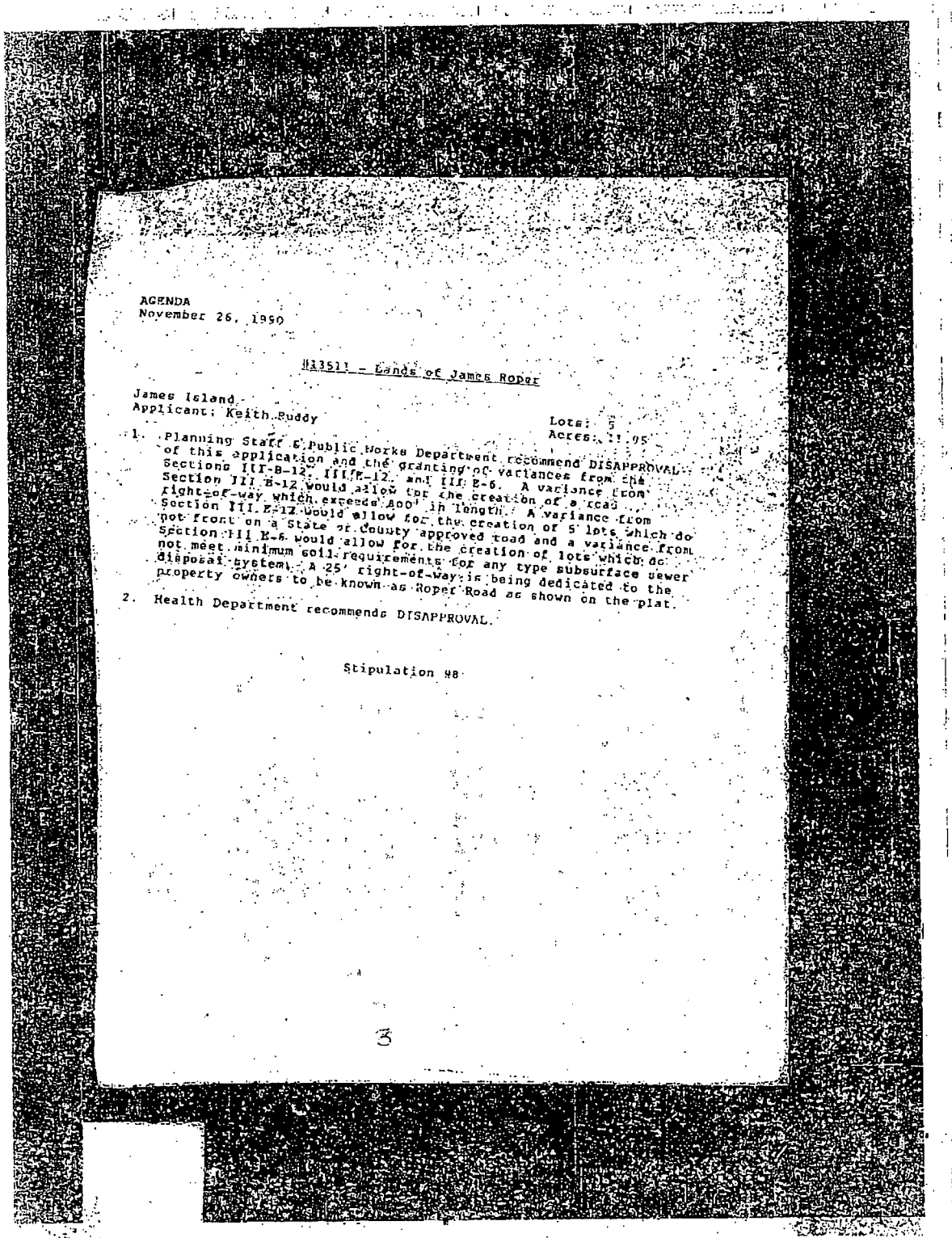
Very truly yours,

Beverly T. Craven
Clerk of Council

BTC/slw

cc: County Planning Department
Public Works Department
James Roper

Chas. Planning Dept. FOIA Response 3/7/17 015



AGENDA
November 26, 1990

#13511 - Lands of James Roper

James Island
Applicant: Keith Buddy

Lots: 5
Acres: 11.95

1. Planning Staff & Public Works Department recommend DISAPPROVAL of this application and the granting of variances from the Sections III-B-12, III E-12, and III E-6. A variance from Section III B-12 would allow for the creation of a road right-of-way which exceeds 800' in length. A variance from Section III E-12 would allow for the creation of 5 lots which do not front on a State or County approved road and a variance from Section III E-6 would allow for the creation of lots which do not meet minimum soil requirements for any type subsurface sewer disposal system. A 25' right-of-way is being dedicated to the property owners to be known as Roper Road as shown on the plat.

2. Health Department recommends DISAPPROVAL.

Stipulation 98

3

Chas. Planning Dept. FOIA Response 3/7/17 016

HEALTH DEPARTMENT REPORT FOR

( ) APPROVAL OF FINAL PLAT
(X) APPROVAL OF COND. & FINAL PLAT
( ) APPROVAL OF EXEMPT PLAT

APPLICATION NUMBER 13541 DATE 6-7-89

NAME OF SUBDIVISION James Roper

AN APPLICATION HAS BEEN SUBMITTED TO THE CHARLESTON COUNTY PLANNING BOARD FOR APPROVAL OF THE PLAT REFERENCED ABOVE.

VISUAL INSPECTION OF THIS SUBDIVISION MADE ON 6-7-89,

BY Lee Carle

(X) APPLICATION PENDING; PROVIDE THE FOLLOWING INFORMATION (ONLY THOSE ITEMS CHECKED).

( ) PROVIDE A LETTER FROM THE APPROPRIATE AGENCY STATING THAT APPROVED PUBLIC WATER IS PROVIDED TO EACH LOT.

( ) PROVIDE A LETTER FROM THE APPROPRIATE AGENCY STATING THAT APPROVED PUBLIC SEWAGE IS PROVIDED TO EACH LOT.

(X) SITE INSPECTION AND SOIL EVALUATION OF ~~EACH~~ LOT BY QUALIFIED ENVIRONMENTALIST. Lot C Lee disapproved for modified system 6/28/89

APPLICATION IS ( ) APPROVED (X) DISAPPROVED DUE TO THE FOLLOWING: * LOTS C-2, C-3, C-4, AND C-5 ONLY - HT 6-31-89

( ) PROVIDED APPROVED PUBLIC SEWAGE AND APPROVED PUBLIC WATER IS PROVIDED TO EACH LOT.

RECEIVED
CHARLESTON COUNTY
PLANNING BOARD

( ) BASED ON SITE AND SOIL EVALUATION LOTS _____ DO MEET CURRENT MINIMUM S.C. DHEC STANDARDS.

(X) BASED ON SITE AND SOIL EVALUATION LOTS # C-1 does ~~DO~~ NOT MEET CURRENT MINIMUM S.C. DHEC STANDARDS DUE TO THE FOLLOWING:

Evidence of seasonal High Wat at less than 29"

_____ MODIFIED SYSTEMS, HOWEVER, MAY BE CONSIDERED FOR _____

(X) LOT/LOTS C2 C3 C4 & C5 DO NOT MEET MINIMUM S.C. DHEC STANDARDS FOR ANY TYPE APPROVAL SUB-SURFACE DISPOSAL SYSTEM(S) DUE TO Evidence of seasonally high WT at less than 17" on each of these proposed lots

(X) ADDITIONAL REMARKS: _____

SIGNED: _____

REPRESENTATIVE
ENVIRONMENTAL HEALTH
CHARLESTON COUNTY HEALTH DEPARTMENT
334 CALHOUN STREET

Chas. Planning Dept. FOIA Response 3/7/17 017

( ) PROVIDE A LETTER FROM THE APPROPRIATE AGENCY STATING THAT APPROVED PUBLIC WATER IS PROVIDED TO EACH LOT.

( ) PROVIDE A LETTER FROM THE APPROPRIATE AGENCY STATING THAT APPROVED PUBLIC SEWAGE IS PROVIDED TO EACH LOT.

(X) SITE INSPECTION AND SOIL EVALUATION OF ~~EACH~~ LOT BY QUALIFIED ENVIRONMENTALIST. ALL LOTS C-2, C-3, C-4, AND C-5 ONLY - HT 8 31-89

APPLICATION IS ( ) APPROVED ( ) DISAPPROVED DUE TO THE FOLLOWING:

( ) PROVIDED APPROVED PUBLIC SEWAGE AND APPROVED PUBLIC WATER IS PROVIDED TO EACH LOT.

( ) BASED ON SITE AND SOIL EVALUATION LOTS _____ DO MEET CURRENT MINIMUM S.C. DHEC STANDARDS.

(X) BASED ON SITE AND SOIL EVALUATION LOTS #C-1 does NOT MEET CURRENT MINIMUM S.C. DHEC STANDARDS DUE TO THE FOLLOWING:

evidence of seasonal high water at less than 24" in the

A MODIFIED SYSTEMS; HOWEVER, MAY BE CONSIDERED FOR A type II or III

(X) ~~LOT~~/LOTS C-1, C-2, C-4 + C-5 DO NOT MEET MINIMUM S.C. DHEC STANDARDS FOR ANY TYPE APPROVAL SUB-SURFACE DISPOSAL SYSTEM(S) DUE TO soils

with evidence of seasonal high water less than 12" or each of these

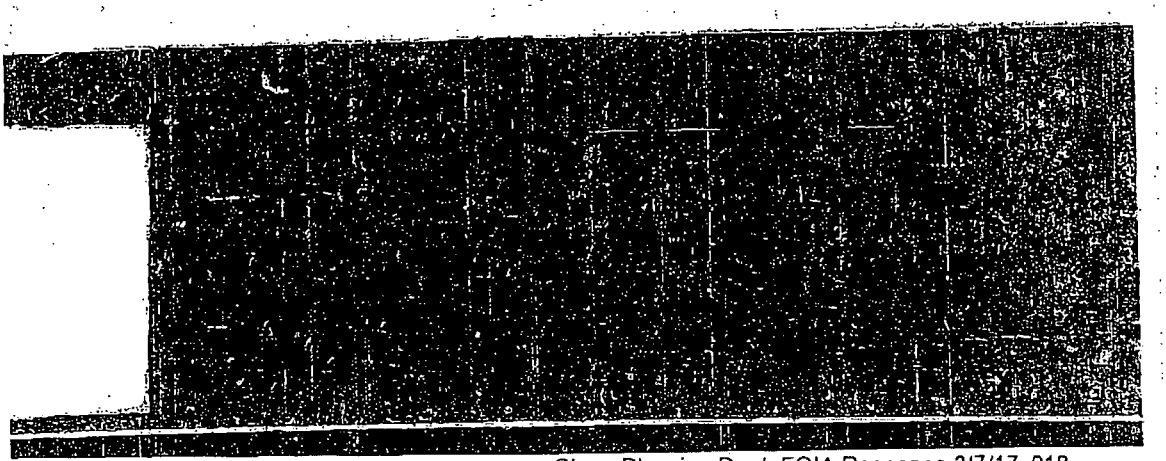
lots

(X) ADDITIONAL REMARKS: ~~The~~ public sewer is available to lots C-1 thru C-5 per Charleston Water System. It is recommended that the developer of the property right of way for these lots to be dedicated to the public.

SIGNED: [signature] 9/5/89

REPRESENTATIVE
ENVIRONMENTAL HEALTH
CHARLESTON COUNTY HEALTH DEPARTMENT
334 CALHOUN STREET

RECEIVED
SEP 7 1989
CHARLESTON COUNTY
PLANNING BOARD



Chas. Planning Dept. FOIA Response 3/7/17 018

Trident Health District

South Carolina Department Of Health And Environmental Control

Joe Carroll Chambers, M.D., M.P.H.
District Medical Director

334 Calhoun Street
Charleston, S.C. 29401

September 6, 1989

RECEIVED
SEP 1989
CHARLESTON COUNTY
PLANNING BOARD

James Roper
% Virginia Roper Brown
857 5th Avenue
Charleston, SC 29407

Re: T.M.S. #341-00-00-029, P.B. #13511, E.H. Application Numbers 5272 and 5414 thru 5417-89, Bradham Road, James Island

Dear Ms. Brown:

On May 25 and August 21, 1989, an evaluation of the soil profile at a site on each of the referenced lots was made by a qualified Environmentalist of this department. The purpose of this evaluation was to determine if each lot evaluated complies with current minimum standards as outlined in S.C. DHEC Regulation 61-56, "Individual Waste Disposal Systems Regulations and Standards".

We are pleased to inform you that proposed lot #C-1 does comply with current minimum standards for a modified conventional subsurface treatment and disposal system. A modified conventional system is somewhat more expensive to install than a conventional system. The reason for offering this type system is due to evidence of seasonally high ground water table at less than 29 inches on proposed lot C-1.

It is with regret that we must inform you that proposed lots C-2,C-3,C-4 and C-5 do not comply with current minimum standards for any type approvable subsurface treatment and disposal system offered in the S.C. DHEC Regulation 61-56. This is due to evidence of seasonally high ground water table at less than 12 inches on each of these lots (refer to S.C. DHEC Regulation 61-56, Section V, Paragraph "B").

Planning Board Approval of your plat cannot be recommended due to the unsuitability of lots C-2 thru C-5. Public sewer is located at the end of existing pavement on Bradham Road. Suggest that you contact the James Island Public Service Commission about extending the sewer lines down your proposed road right-of-way and make each of these lots accessible to public sewer service.

Dorchester County Division
201 Gavin Street
St. George, S.C. 29477
563-2331 - 821-1624

Charleston County Division
334 Calhoun Street
Charleston, S.C. 29401-1188
724-5800

Berkeley County Division
109 West Main Street
Moncks Corner, S.C. 29461
761-8090

Chas. Planning Dept. FOIA Response 3/7/17 019

If you have any questions regarding this matter, I would appreciate you calling 724-5970 between 8:30 and 9:30a.m., any Monday thru Friday to speak with me and, if necessary, schedule an appointment prior to making a trip into our office. Please have a copy of this letter in hand when you call.

Sincerely,

Ben B. Bozardt, RS
Environmental Quality Manager III
Environmental Health Services

:me

cc: Charleston County Planning Board, w/copy enclosed

Chas. Planning Dept. FOIA Response 3/7/17 020

Trident Health District
South Carolina Department Of Health And Environmental Control

Joe Carroll Chambers, M.D., M.P.H.
District Medical Director

334 Calhoun Street
Charleston, S.C. 29401

RE[illegible]D
JU[illegible]
CHARL[illegible]TY
PLANNING [illegible]

July 19, 1989

James Roper
& Virginia Roper Brown
857 5th Avenue
Charleston, SC 29407

Re: T.M.S. #341-00-00-029, P.B. #13511, E.H. Application Numbers 5414 thru 5417-89, Bradham Road, James Island

Dear Mr. Roper:

On July 14, 1989, an attempt to evaluate the soil profile on the referenced lots was made by a qualified Environmentalist of this department. The purpose of this evaluation was to determine if each lot could support an individual on-site sewage treatment and disposal system in accordance with approved standards as outlined in S.C. DHEC Regulation 61-56, "Individual Waste Disposal Systems Regulations and Standards".

This letter is to inform you that your request for Planning Board Approval of a Conditional and Final Plat is PENDING.

Due to the overgrown condition of lots C-2 thru C-5, an evaluation of these lots for subsurface treatment and disposal systems is not possible. Please have your surveyor cut site lines down all lot lines and flag all lot corners so that an evaluation of each lot can be made. No further action on your Planning Board request may be accomplished until this is done and this office is notified.

If you have any questions regarding this matter, I would very much appreciate you calling me at 724-5970 between 8:30 and 9:30a.m., any Monday thru Friday to speak with me and, if necessary, schedule an appointment prior to making a trip into our office.

Sincerely,

Ben B. Bozardt, RS
Environmental Quality Manager III
Environmental Health Services

:me

cc: Charleston County Planning Board, w/copy enclosed

Dorchester County Division
201 Gavin Street
St. George, S.C. 29477
563-2331 · 821-1624

Charleston County Division
334 Calhoun Street
Charleston, S.C. 29401-1188
724-5000

Berkeley County Division
109 West Main Street
Moncks Corner, S.C. 29461
761-8020

Chas. Planning Dept. FOIA Response 3/7/17 021

Law Offices

Martin, Gailliard and Martin

61 Morris Street - P. O. Box 2037 & 2153
Charleston, South Carolina 29403-037

Daniel E. Martin, Sr.
Robert L. Gailliard
Daniel E. Martin, Jr.

Telephone
(803) 723-8008
723-1631

January 26, 1990

Mr. John Waring
Charleston County Planning Board
County Office Building
Charleston, S.C. 29401

RECEIVED
JAN 2 9 1990
CHARLESTON COUNTY
PLANNING BOARD

RE: TMS: 341-00-00-029

Dear Mr. Waring:

I have examined the records of the Charleston County R.M.C. Office with regard to the above mentioned property. According to information on record, J.L. Roper received this property by deed of the Estate of John Black dated July 11, 1930, and recorded in the R.M.C. Office in Book J-34, at page 271. No estate has been administered in the Charleston County Probate Court for J.L. Roper and the property is presently owned by his heirs.

With kindest regards, I am,

Yours very truly,

Daniel E. Martin, Jr.

DANIEL E. MARTIN, JR.

DEM/bm

Chas. Planning Dept. FOIA Response 3/7/17 022

RECEIVED
JUL 3 1 1989
CHARLESTON COUNTY
PLANNING DEPT.

Law Offices

Martin, Gailliard and Martin

61 Morris Street - P. O. Box 2037 & 2155
Charleston, South Carolina 29403-037

Telephone (803) 723-1636 723-1637

Daniel S. Martin, Sr.
Robert L. Gailliard
Daniel S. Martin, Jr.

RECEIVED
JUL 3 1 1989
CHARLESTON COUNTY
PLANNING BOARD

July 21, 1989

Charleston County Planning Board
2 Courthouse Square
Charleston, S.C. 29402

RE: PROPERTY OF MR. JAMES ROPER APPLICATION # 13511

To Whom It May Concern:

As requested, please be advised that enclosed is a copy of the deed into J. L. Roper from the Estate of John Black. The deed was executed on July 11, 1930 and is recorded in the R.M.C. Office for Charleston County in Book J-34, at page 271.

Please be further advised that upon information and belief the children of J. L. Roper are as follows:

1.) Virginia Roper Brown
2.) Julia Roper
3.) Florence Flamming
4.) Percie Prioleau
5.) Ruth Craig

The above information was provided by the family of James Roper.

Daniel S. Martin, Jr.
DANIEL S. MARTIN, JR.

DSM/demja

Chas. Planning Dept. FOIA Response 3/7/17 023

CHARLESTON COUNTY
PLANNING BOARD

July 5, 1989

Charleston County Planning Board
2 Courthouse Square
Charleston, S.C. 29401

Re.: Application #13511; Heirs of James Roper

Dear Sirs:

We the Heirs of James Roper would like to request variances from sections of the Charleston County Subdivision regulations due to the fact that we are trying to subdivide this tract for family purposes. We as heirs of James Roper, Sr. are ourselves getting old and would like to straighten out the title of this property prior to our deaths so that our children and grandchildren don't have the problems associated with heirs property.

Through the years this tract which once stretched from Riverland Drive to the marshes of the Stono River, has been subdivided until this 5.95 Acre tract remained with only a 20' access connecting it to Bradham Road. We cannot give an additional 5' for road right-of-way due to the fact that a great portion of it would have to come from someone else's property. We are aware that this land possesses very poor soil conditions for septic systems and would like to request that the subdivision be approved with the stipulation that any lot which will not support a septic system be restricted from becoming a building lot until such time that public sewer service can be provided to that lot.

Please consider our request and thank you for your time.

Heirs of James Roper

Virginia R Brown
Julia A Roper
Percival R Bivleau
Ruth Roper Craig
Florence R Fleming

Chas. Planning Dept. FOIA Response 3/7/17 024

Public Works Dept: Please complete the following and return two copies of this report to the Planning Board within three days of the on-site inspection.

DEPARTMENT OF PUBLIC WORKS

☒ APPROVAL OF COND. & FINAL PLAT

RE/1520 ☐ APPROVAL OF FINAL PLAT

☐ APPROVAL OF EXEMPT PLAT

Parish: James Island Tax Map No. 460-04-00-001

Application No. 13511 Date: 8/14/89

Name of Subdivision: James Koper

An application has been submitted to the Charleston County Planning Board for approval of the plat referred to above. Under the remarks section below, indicate additional drainage easements or street improvements required, and other comments relative to those portions of the Subdivision Regulations which come within the specific purview of the Department of Public Works.

Visual inspection of the subdivision made on 8/14/89 by

Larry Kennedy.

APPROVED _____ DISAPPROVED XXXX

JAMES ROGERS
Director, Department of Public Works
4350 Azalea Dr
Charleston Heights, S.C. 29405

REMARKS: *(If none, so state)*

1. Lots C1, C2, C3, C4, and C5 do not front on a state or county approved road.

2. Provide surveyors signature on plat.

RECEIVED
[illegible]
CHARLESTON [illegible] COUNTY
PLANNING [illegible]
Chas. Planning Dept. FOIA Response 3/7/17 025

Application# 13511 Date of Inspection 06-26-89
Property Owner James Roper Surveyor Precision

Charleston County Health Department, Public Works Department and Planning Staff inspected and evaluated the property shown on the survey you submitted to our office. Listed below are comments from the Planning Staff. The following items need to be added or changed on the plat.

_____ 1. Minimum size-8 1/2 x 11"
_____ 2. Maximum size-22 x 34
_____ 3. Minimum scale preliminary: 1"=200'
Exempt and Final: 1"=100'
_____ 4. Location map showing vicinity road names
_____ 5. North Arrow (True, magnetic, grid)
_____ 6. Title Block must include:

- |_| purpose of plat ex. combing
- |_| name of established subdivision if applicable
- |_| area of county
- |_| Charleston County, South Carolina
- |_| date of survey
- |_| total combined acreage

X 7. Show date of revised plat
_____ 8. Property owner(s) name(s)
_____ 9. Graphic scale and numerical scale
distance to mean high water 10. Distances and bearings on all perimeter lines, actually surveyed and computed with certified precision of accuracy.
for marshalnd Lt C5; acres of pond 11. Acreage for each lot (except for preliminary plats).
Lt C2 & Lt C1
_____ 12. Lots numbered or lettered with block numbers where appropriate.
_____ 13. Irons/property corners marked, new or old
propose name for Rd, reserve with 14. Names of roads and rights or way widths. Check
9-1-1 staff 723-6744 street index to avoid duplication of proposed street names.
_____ 15. Tie distances to nearest county or state approved maintained road.
_____ 16. Names of adjacent property owners: except in established platted subdivisions then lot numbers.
_____ 17. Curve data
_____ 18. Document all recording information for Previously Approved rights-of-way, ingress/egress easements and drainage easement.

Chas. Planning Dept. FOIA Response 3/7/17 026

	19.	"The area shown on this plat is a general representation of Coastal Council permit authority on the subject property. Critical areas by their nature, are dynamic and subject to change over time. By generally delineating the permit authority of the Coastal Council the Coastal Council in no way waives the right to assert permit jurisdiction in any critical area on the subject property whether shown or not."
plat must be signed by a licensed surveyor	20.	At discretion of the Planning Director, the residual may be required to be surveyed.
	21.	Surveyors signature ink seal with standard certification for Charleston County which indicates error of closure. (surveyors telephone numbers are helpful although not required).
THS # & Lt # which affects this Lt	22.	Tax map number is required on plat.
	23.	Submit a preliminary plat, showing topo (1 ft. contour lines), established by a Registered Engineer or Surveyor for the State of South Carolina.
X	24.	This plat must be reviewed by the Planning Board and acted upon by County Council. In order to expediate the recording of this plat, please submit a $5.00 recording fee.
	25.	Provide a letter of variance signed by the owner. This letter should cite specific reasons for the granting of a variance from Section III E-12 which would allow the approval of lots which do not front on a road constructed to county standards. Please state if lots are to be divided amongst family members or other purposes for dividing property.
dead end streets over 800' in len 6th	26.	Provide a letter of variance from Section III B-12 stating the reasons the variance should be granted.
X	27.	The Charleston County Health Department will notify you of their findings after an on-site inspection has been completed by a member of their staff.
X	28.	The Charleston County Public Works Department comments were not received by the date of this mailing. For information concerning their reports contact Mr. Ken Rosenbaum, 745-2207.
	29.	For Bonding purposes, the Public Works Department must approve in writing the estimated cost of completion for road(s) and drainage. The letter of credit must be 125% of the approved estimated cost.
	30.	For bonding purposes the Health Department must approve in writing the estimated cost of completion for water and sewer. The letter of credit must be 125% of the approved estimated cost.
	31.	List all prior plat/deed references.

Chas. Planning Dept. FOIA Response 3/7/17 027

X 32. Certificate of Ownership prepared by an Attorney. Please place application # on letter.

X 33. Appropriate Standard dedication statements signed.

Road Right-of-Ways

|_| Public
I/We hereby dedicate the 50' road right of way to the use of the public forever. Owners of these lots and their heirs and assigns guarantee its maintenance until such time as it is accepted into a public maintenance system.

|X| Private
I/We hereby dedicate the 50' road right-of-way to the use of the property owners. The owners of these lots and their heirs an assigns guarantee its maintenance.

|_| Homeowners Agreement
We hereby dedicate the roads and drainage easements shown hereon to the use of the (Homeowners Association). The approval of this plat in no way obligates the County of Charleston to accept for continued maintenance any of the roads or easements shown on this plat.

|_| Final Subdivision Plat
We/I hereby dedicate the roads and drainage easements to the use of the public forever.

Drainage Easements

|_| "I/We hereby dedicate the (width) drainage easement to the use of the Public forever."_____(owner)

|_| If more than 3 drainage easements, (I/we) hereby dedicate the drainage easements shown on this plat to the use of the public forever."_____(owner)

|_| If drainage easement is not an existing ditch but reserved for future use: "Approval of this plat in no way obligates the County of Charleston to maintain this easement until it has been constructed to County standards."

X 34. Submit a letter certifying the availability of Public water and sewer.

Public Water		Public Sewer	
|_|	Bull's Bay Water	|X|	James Island
|X|	CPW	|_|	Kiawah Service District
|_|	Mt. Pleasant Water Works	|_|	Mt. Pleasant Sewer Commission
|_|	St. John's Water Co	|_|	N. Chas Sewer District
		|_|	St. Andrews

Chas. Planning Dept. FOIA Response 3/7/17 028

Additional Items for Preliminary Plat

1. Proposed layout and plan for entire tract.
2. Physical features of entire track showing contour intervals of one foot, based on mean sea level, existing drainage ditches, roads and wooded areas.
3. Bench mark and datum used on plat (MSL).
4. General drainage plan for entire track.
5. Certification of perimeter.
6. Drainage easements as required by Public Works Department.
7. Total acreage (of all lots combined).
8. Tree Survey of significant trees for roads and drainage easements in resident zones.
9. Tree Survey per requirements of tree ordinance.

Additional Comments:

Expand 20' road R/W to 25' in width. Line & show property area to Stono River
Show acreage and distance ±

If you have any questions concerning these comments contact John Waring, Sharon Whaley, Ray Brown, or me at the Planning Department (723-6739) and refer to your application number.

Sincerely,

M. Schneider

Miki M. Schneider
Subdivision Administrator

6.29.87
Date Form Completed

Chas. Planning Dept. FOIA Response 3/7/17 029

Public Works Dept: Please complete the following and return two copies of this report to the Planning Board within three days of the on-site inspection.

RECEIVED
JUN 2 9 1989
CHARLESTON COUNTY PLANNING DEPT.

DEPARTMENT OF PUBLIC WORKS

☒ APPROVAL OF COND. & FINAL PLAT

☐ APPROVAL OF FINAL PLAT

☐ APPROVAL OF EXEMPT PLAT

Parish: JAMES ISLAND Tax Map No. 460-04-00-001

Application No. 13511 Date: 06-26-89

Name of Subdivision: James Roger

An application has been submitted to the Charleston County Planning Board for approval of the plat referred to above. Under the remarks section below, indicate additional drainage easements or street improvements required, and other comments relative to those portions of the Subdivision Regulations which come within the specific purview of the Department of Public Works.

Visual inspection of the subdivision made on 6/27/89 by

Larry Kennedy&Kenneth E. Wrenbeus

APPROVED _____ DISAPPROVED XXXXX

JAMES ROGERS
Director, Department of Public Works
4350 Azalea Dr
Charleston Heights, S.C. 29405

REMARKS: *(If none, so state)*

1. Lots C1, C2, C3, C4 and C5 do not front on a state or county approved road.

2. Provide surveyors signature on plat.

Chas. Planning Dept. FOIA Response 3/7/17 030

271

Estate of John Black

To

J. L. Roper

BOOK J. 34 TITLE TO REAL ESTATE

The State of South Carolina

Whereas, John Black died intestate on or about the 17th Day of March, 1916, seized and possessed of a tract of land consisting of Fifty-one acres of land located on James Island, Charleston County and State aforesaid, of which the premises hereinafter described is a part and parcel, leaving surviving him as his sole heirs at law and distributees his following named children, to-wit: Martha Green, nee Black; Isabella Pinckney, nee Black; John Bryant, nee Black; and Mary Anderson, nee Black; and

Whereas, said John Bryant died intestate on or about the ___ day of December, 1925, leaving surviving her as her sole heir at law and distributee her husband, Benjamin Bryant, adult, widower and now unmarried.

KNOW ALL MEN BY THESE PRESENTS, THAT We, the said Martha Green, Isabella Pinckney, Mary Anderson and Benjamin Bryant, all of Charleston County, (hereinafter called the Grantors) in the State aforesaid,

in consideration of the sum of Eight Hundred And Twenty-Five ($825.00) Dollars, to us in hand paid at and before the sealing of these Presents by J. L. Roper, of James Island, in Charleston County, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said J. L. Roper:

All that tract of land, situate, lying and being on James Island, in Charleston County, State aforesaid,

Containing And Containing Eleven (11) Acres more or less,

Butting And Bounding North on lands now or late of Paul Dalaney; East on Public Road; South on lands now or late of Emeline Brown and the Estate of John Black, and West on Meadow of Stono River; which said tract of land is the northernmost division of Eleven acres of land appearing on a plat drawn by ___ this 12th day of April, 1899 annexed to a Deed from C. H. Tate, Master to John Black recorded in Book P-23 page 191 in the R. M. C. Office for Charleston County, S. C.

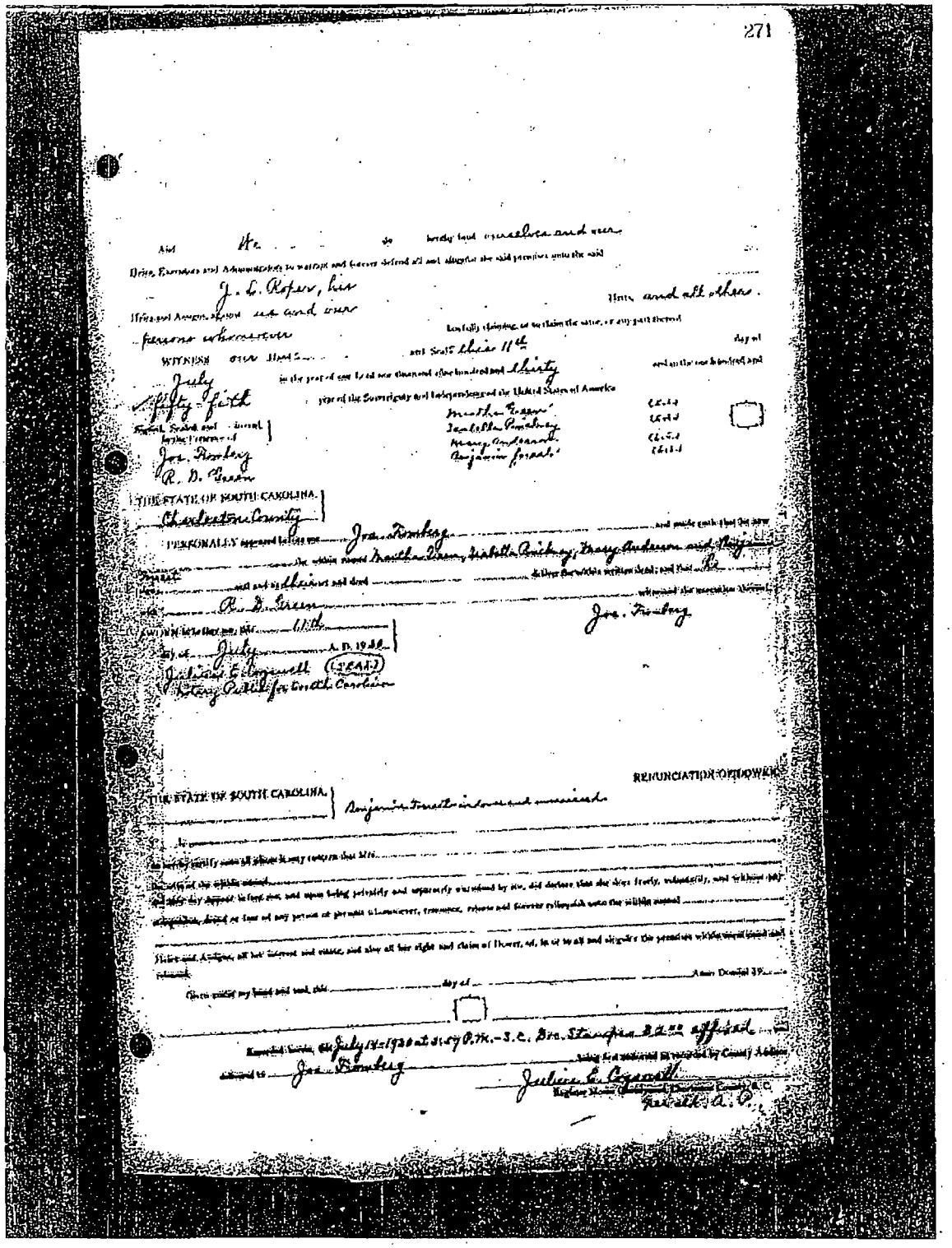
The consideration hereinabove set forth being the true, full and complete consideration.

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

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said J. L. Roper, his Heirs and Assigns forever.

DEED

Chas. Planning Dept. FOIA Response 3/7/17 031



271

And We ... do hereby bind ourselves and ours

Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the said

J. L. Roper, his

Heirs and Assigns, from and against ... heirs and all others.

persons whomsoever lawfully claiming, or to claim the same, or any part thereof

WITNESS our Hands and Seals this 11th day of

July in the year of our Lord one thousand nine hundred and thirty and in the one hundred and

fifty-fifth year of the Sovereignty and Independence of the United States of America

Signed, Sealed and Delivered in the Presence of

Jos. Bowley

R. B. Green

Martha Rogers (L.S.)

Isabella Pinckney (L.S.)

Mary Anderson (L.S.)

Benjamin Israel (L.S.)

THE STATE OF SOUTH CAROLINA,
Charleston County

PERSONALLY appeared before me Jos. Bowley and made oath that he saw the within named Martha Rogers, Isabella Pinckney, Mary Anderson and Benjamin Israel sign, seal and as their act and deed deliver the within written deed; and that he with R. B. Green witnessed the execution thereof.

Jos. Bowley.

SWORN to before me, this 11th day of July A. D. 1930.

Julius E. Rogowell (SEAL)
Notary Public for South Carolina

RENUNCIATION OF DOWER.

THE STATE OF SOUTH CAROLINA,

Benjamin Israel wife of the ... named ...

I, ... do hereby certify unto all whom it may concern that Mrs. ... the wife of the within named ... did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named ... and ... Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal, this ... day of ... Anno Domini 19...

Recorded July 14-1930 at 11:07 P.M. - S.C. Rev. Stamps $2.20 affixed

Returned to Jos. Bowley

Julius E. Rogowell
Register Mesne Conveyance Charleston County, S.C.
Asst. Clerk of C. P.

Chas. Planning Dept. FOIA Response 3/7/17 032

Public Works Dept: Please complete the following and return two copies of this report to the Planning Board within three days of the on-site inspection.

DEPARTMENT OF PUBLIC WORKS

☑ APPROVAL OF COND. & FINAL PLAT

REVISED

☐ APPROVAL OF FINAL PLAT

☐ APPROVAL OF EXEMPT PLAT

Parish: James Island Tax Map No. 460-04-00-001

Application No. 13511 Date: 8/29/89

Name of Subdivision: James Point

An application has been submitted to the Charleston County Planning Board for approval of the plat referred to above. Under the remarks section below, indicate additional drainage easements or street improvements required, and other comments relative to those portions of the Subdivision Regulations which come within the specific purview of the Department of Public Works.

Visual inspection of the subdivision made on 8/10/89 by

Larry Kennedy.

APPROVED _____ DISAPPROVED XXXX

JAMES ROGERS
Director, Department of Public Works
4350 Azalea Dr
Charleston Heights, S.C. 29405

REMARKS: *(If none, so state)*

1. Lots C1, C2, C3 C4, and C5 do not front on a [illegible] or county approved road.

2. Provide surveyors signature on plat.

Chas. Planning Dept. FOIA Response 3/7/17 033

PLANNING DEPARTMENT
COUNTY OFFICE BUILDING
2 COURT HOUSE SQUARE
CHARLESTON, SC 29401-2206

County of Charleston

Charleston, South Carolina

JIMMY MOORE, CHAIRMAN
ISAAC HUTTO, VICE CHAIRMAN
DANA BEACH
WM. PAROT BROWN
PHILIP C. DAVIS
DON MILLER
JOHN SEABROOKS
RONNIE SMITH
HENRY WILLIAMS

WILLIAM W. MILLER, DIRECTOR

PHONE (803) 723-6739
IN REPLY REFER TO

MEMORANDUM

TO: Precision Land Surveying

FROM: Charleston County Planning Department

SUBJECT: Disapproval Application, #13511-Lands of James Roper

DATE: November 21, 1990

The above mentioned subdivision application will be presented to the Charleston County Planning Board at its meeting on November 26, 1990 at 4:00 P.M., in the Chambers of the Charleston County Council, Fourth Floor, County Office Building. As the subdivision request does not meet the requirements of the Charleston County Subdivision Regulations, Planning staff has no alternative but to recommend disapproval of the request.

You will be given an opportunity to present your case and answer any questions the Planning Board members may have concerning this application at this meeting. The Planning Board, after due deliberation and discussion, will arrive at their own recommendation regarding each and every application submitted for their consideration.

The recommendations of the Planning staff and Planning Board are then forwarded to the Council Planning & Development Committee for their recommendation to County Council. Considering the three recommendations, Council will then make the final decision. While the official County Council meetings are open to and attended by the public, the agenda items are not normally discussed with the public at that time. Any citizen may, however, write to Council members at any time on any subject.

If you have any questions, please do not hesitate to call the Planning staff at 723-6739. Meeting dates are posted below for your convenience.

PLANNING BOARD:	November 26, 1990
PLANNING & DEVELOPMENT COMMITTEE:	November 30, 1990*
COUNTY COUNCIL:	December 4, 1990*

* Subject to change.

cc: James Roper

Chas. Planning Dept. FOIA Response 3/7/17 034

13511 James Edgar

James Isl.
Keith Ludy

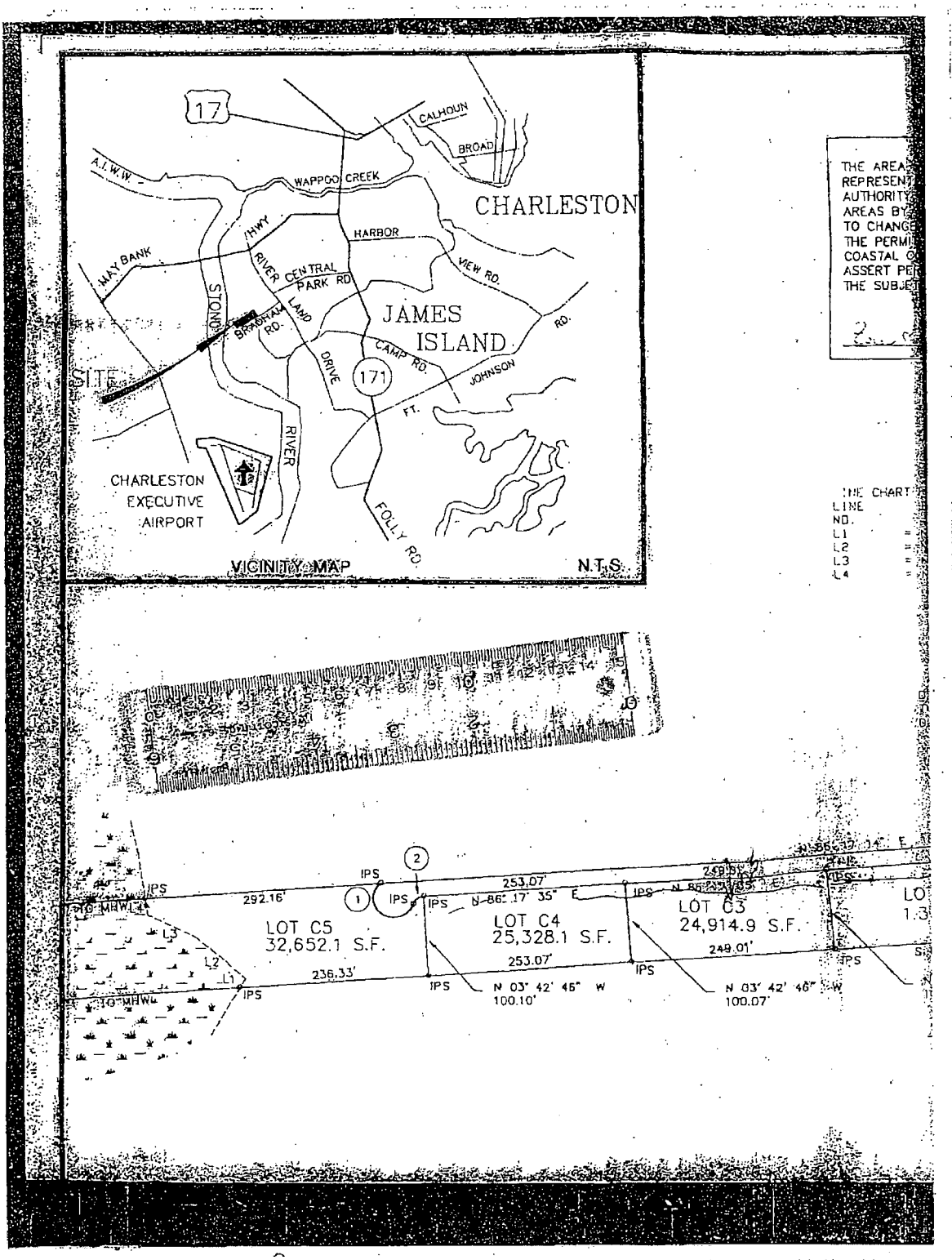
5
11.95

PS + PWD Rec Disapproval ~~To~~
~~The Grant~~ of This Application +
To The Granting of Var. From Sections
III-B-12, III-E-12, III-E-6,
A Var. From Section III-B-12 would
Allow For The Creation of A Rd.
R/W Which Exceeds 800' in Length
A Var From III-E-12 would Allow
For The Creation of 5 Lots without
Dir Access on A State or County
Rd. + A Var From Section III-E-6
would Allow For The Creation of
Lots Which Do Not Provide the Min.
~~Sanitation~~, Meet Min Soil Area For
Any Type Subsurface Sewage Disposal
System + 25' R/W is Not
Dedicated To The Co. Owners
To be Known & Have Rd As
Shown on The Plat

PWD Rec Dis.

Sup. 8

Chas. Planning Dept. FOIA Response 3/7/17 035



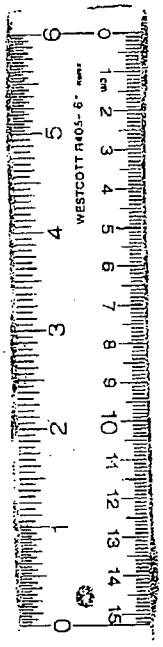
Chas. Planning Dept. FOIA Response 3/7/17 036

AREA SHOWN ON THIS PLAT IS A GENERAL
ESENTATION OF COASTAL COUNCIL PERMIT
ORITY ON THE SUBJECT PROPERTY. CRITICAL
S BY THEIR NATURE, ARE DYNAMIC AND SUBJECT
HANGE OVER TIME. BY GENERALLY DELINEATING
PERMIT AUTHORITY OF THE COASTAL COUNCIL THE
TAL COUNCIL IN NO WAY WAIVES THE RIGHT TO
RT PERMIT JURISDICTION IN ANY CRITICAL AREA ON
SUBJET PROPERTY WHETHER SHOWN OR NOT.

WE THE HEIRS OF JAMES ROPER, DO HEREBY DEDICATE THE 20' ROAD RIGHT-OF-WAY TO THE USE OF THE PROPERTY OWNERS. THE OWNERS OF THESE LOTS AND THEIR HEIRS AN ASSIGNS GUARANTEE ITS MAINTENANCE.

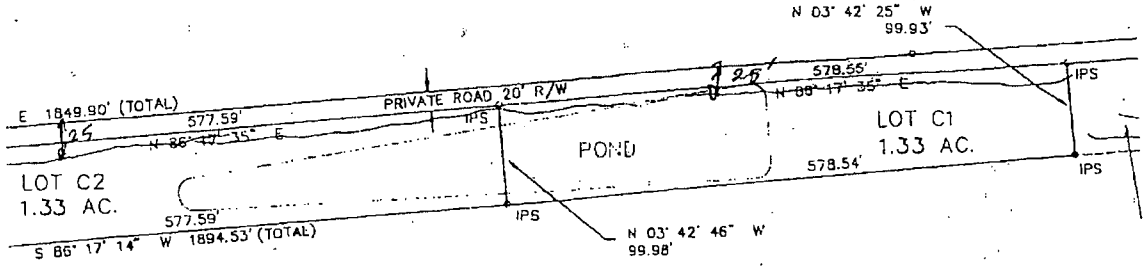
HART FOR C.C.C.L.

BEARING	DIST
= N 31° 19' 46" E	13.35'
= N 49° 25' 54" W	78.80'
= N 64° 02' 30" W	65.87'
= N 09° 31' 10" W	21.50'



H. B. SIMMONS
TMS# 341-00-00-027
D.B. 283 PG. 42

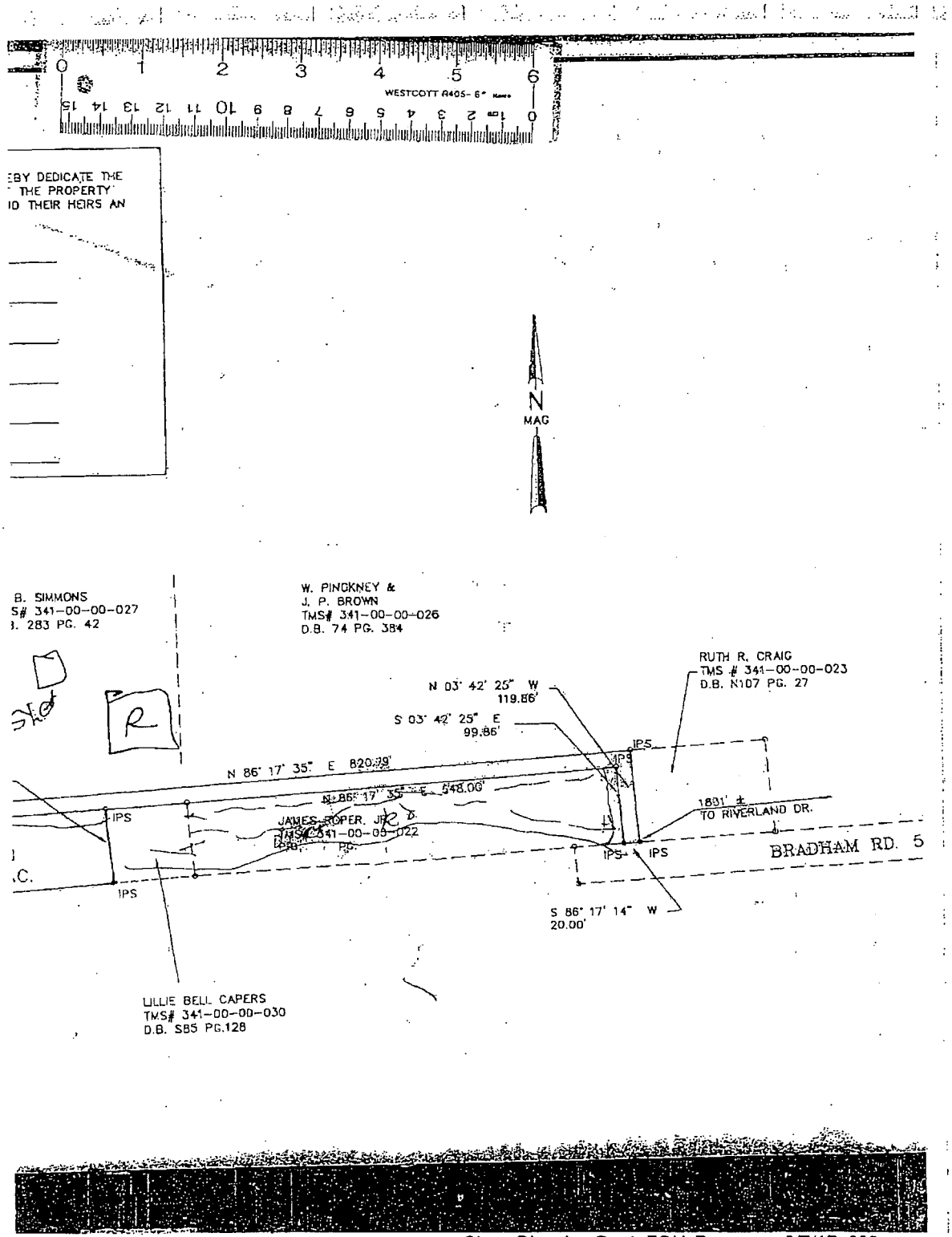
D SOLOMON
TMS# 341-00-00-028
D.B. P137 PG. 344



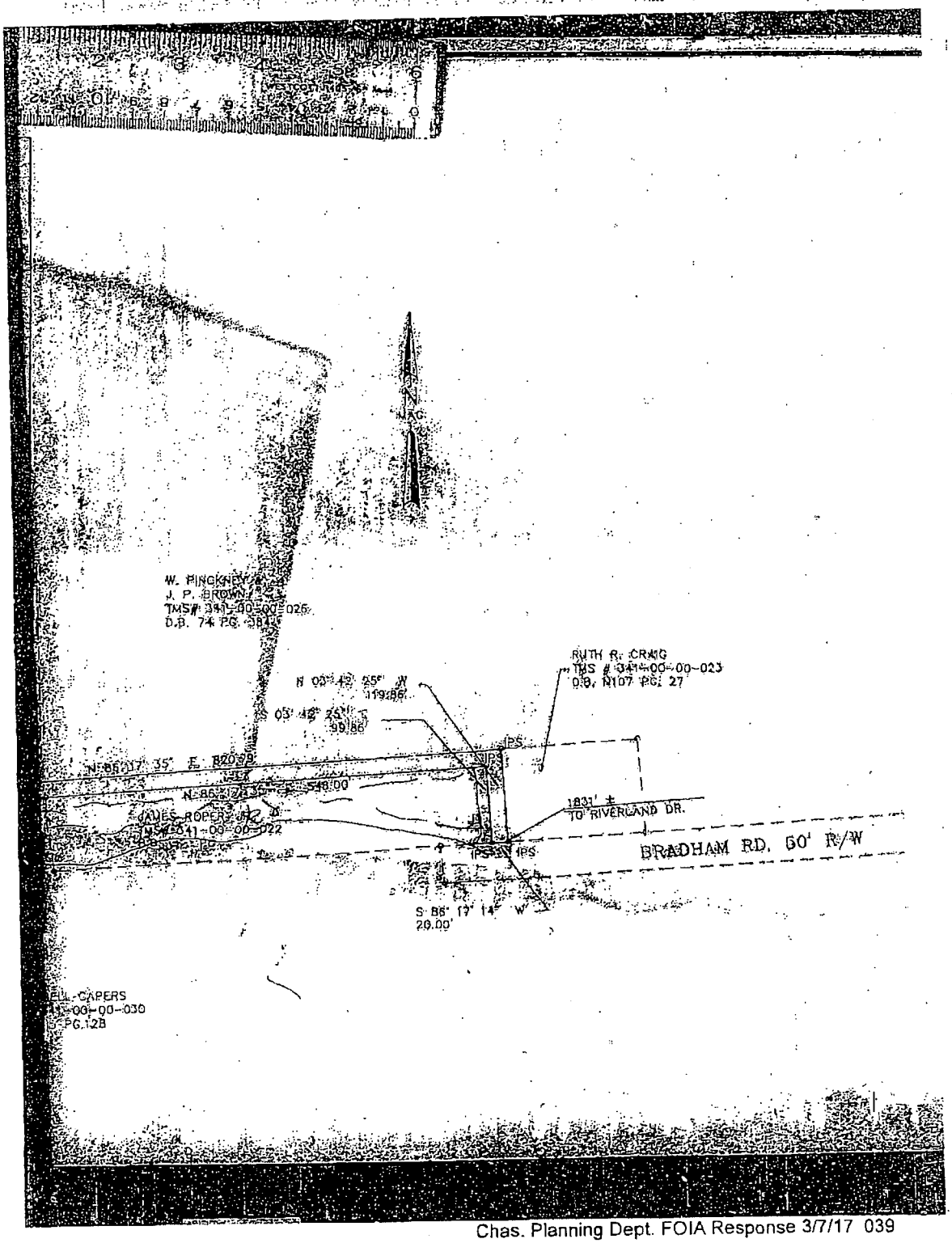
DOLLY ROBINSON
TMS# 341-00-00-032
D.B. S103 PG. 283
P.B. Q PG. 40

LILLIE
TMS#
D.B.

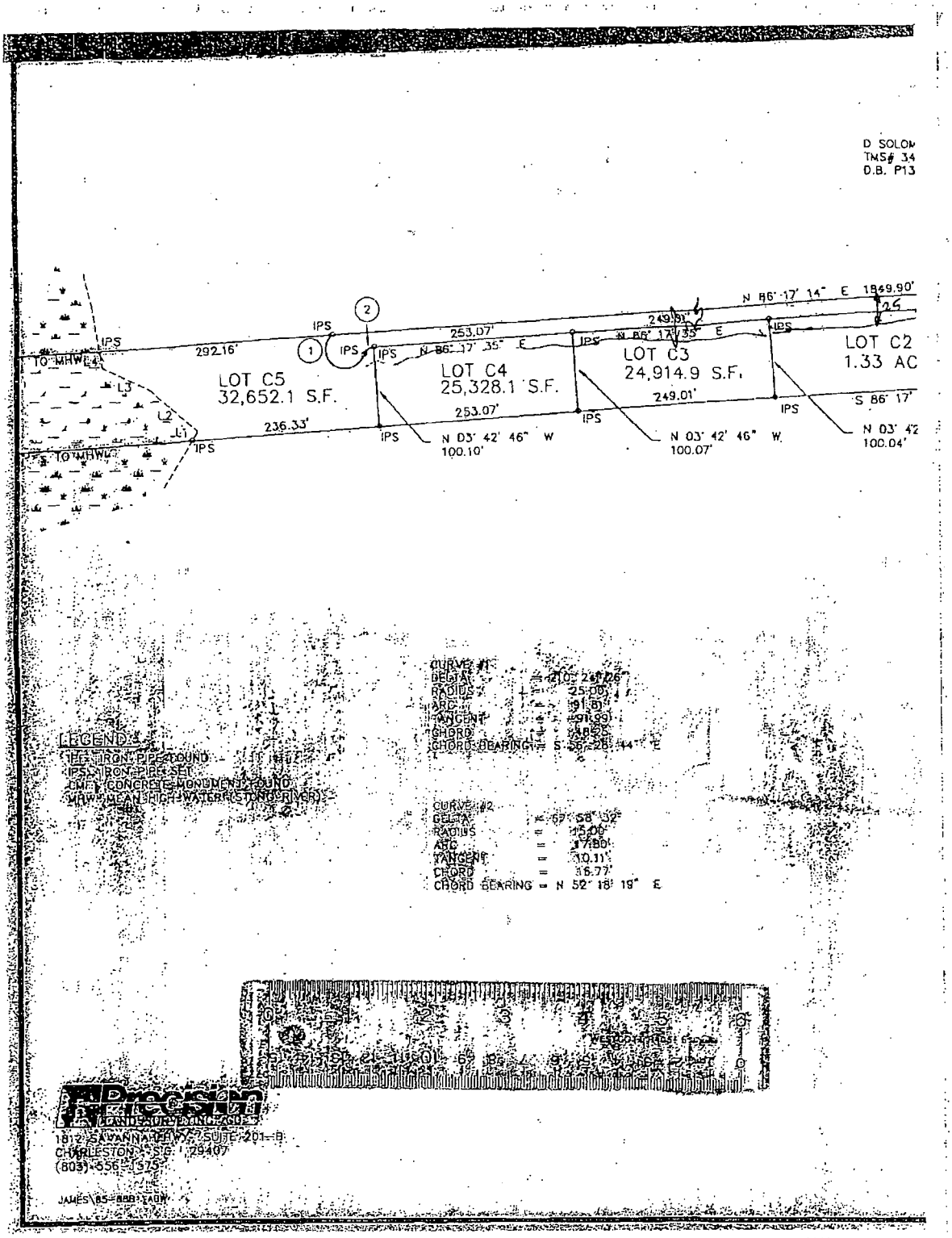
Chas. Planning Dept. FOIA Response 3/7/17 037



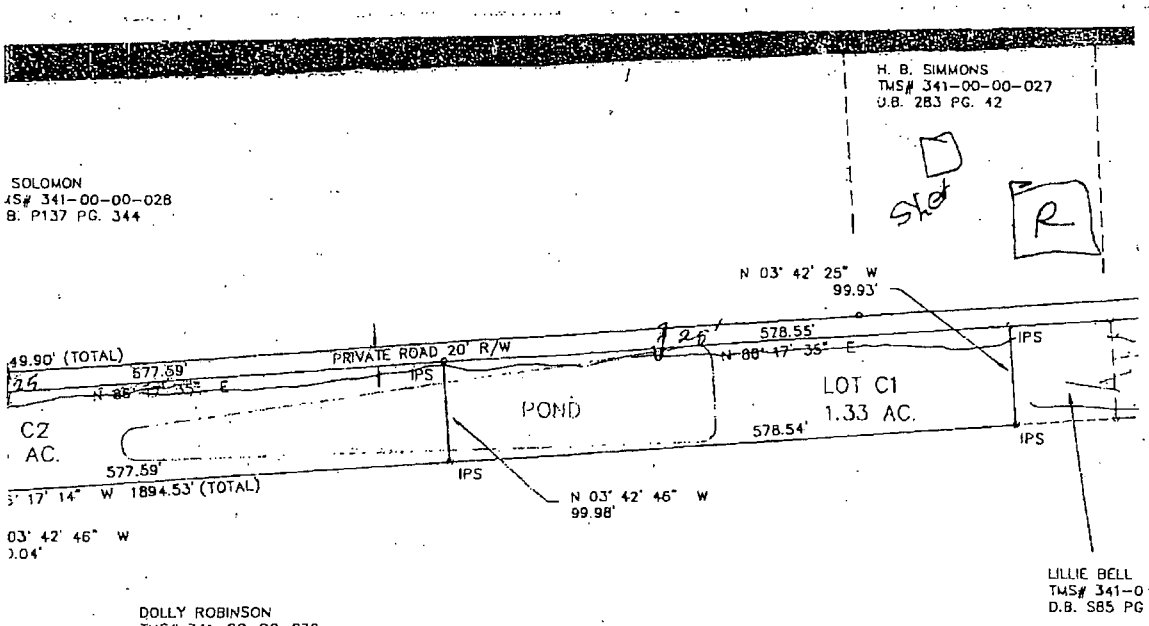
Chas. Planning Dept. FOIA Response 3/7/17 038

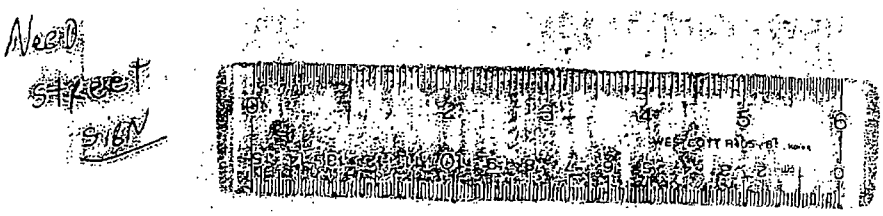


Chas. Planning Dept. FOIA Response 3/7/17 039



Chas. Planning Dept. FOIA Response 3/7/17 040





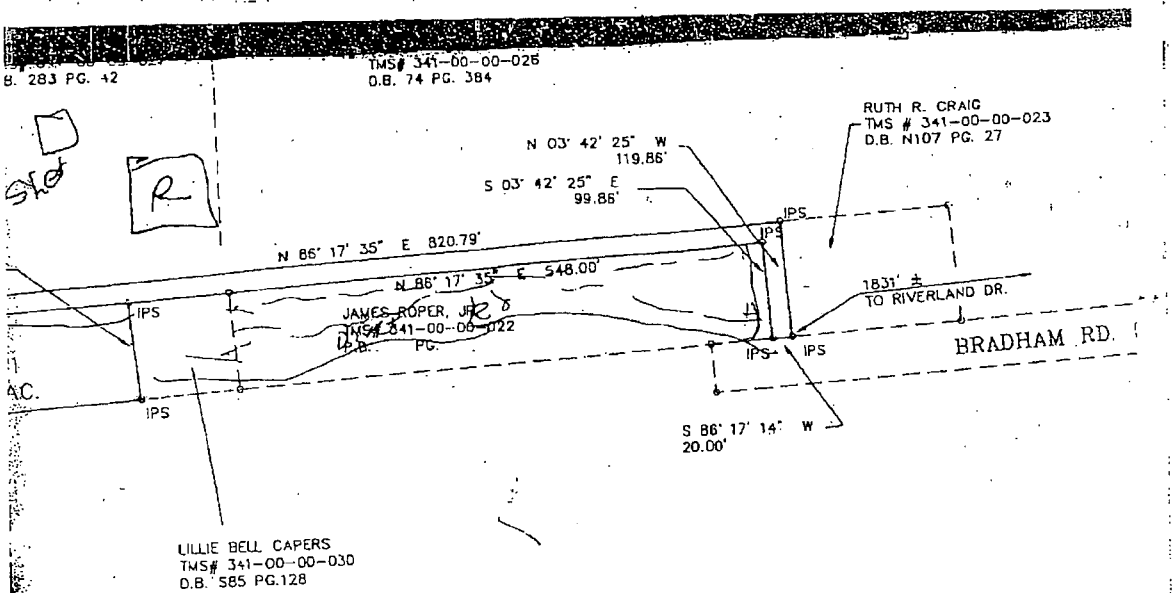
PLAT OF THE SUBDIVISION OF 5.95 ACRES
OWNED BY JAMES ROPER
TO CREATE 5 LOTS
LOCATED ON
JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA

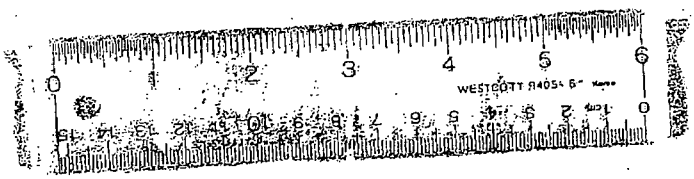
1" = 100' DATE: JANUARY 9, 1989

SCALE IN FEET

100 0 100 200

Chas. Planning Dept. FOIA Response 3/7/17 041





RECEIVED
JUN 2 2 1989
CHARLESTON COUNTY
PLANNING DEPT.

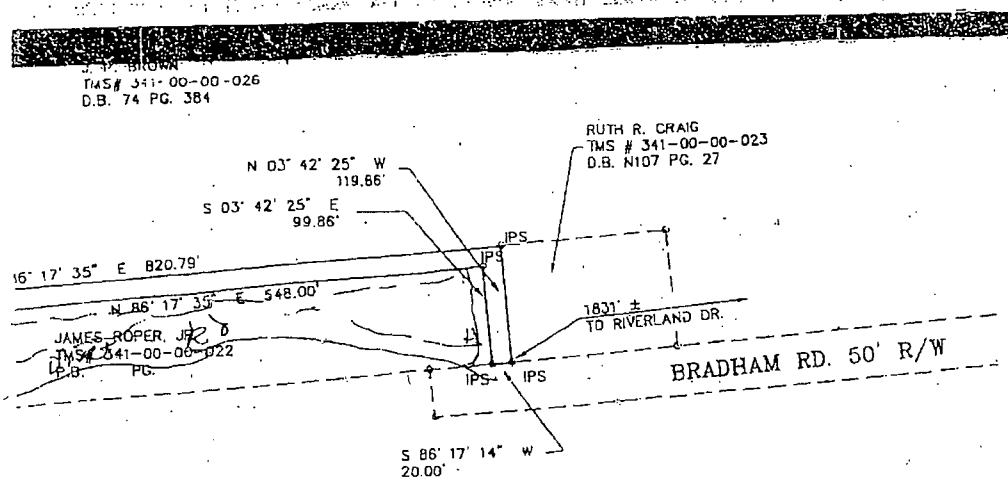
95 ACRES

AROLINA

I, F. ELLIOTT
SURVEYOR OF
HEREBY CERTIF
THE PROPERTY
THIS PLAT SHO
THAT ALL NECE
INSTALLED, AN
THE SURVEY IS
BY RECTANGUL

F. ELLIOT
S.C. REG.

Chas. Planning Dept. FOIA Response 3/7/17 042



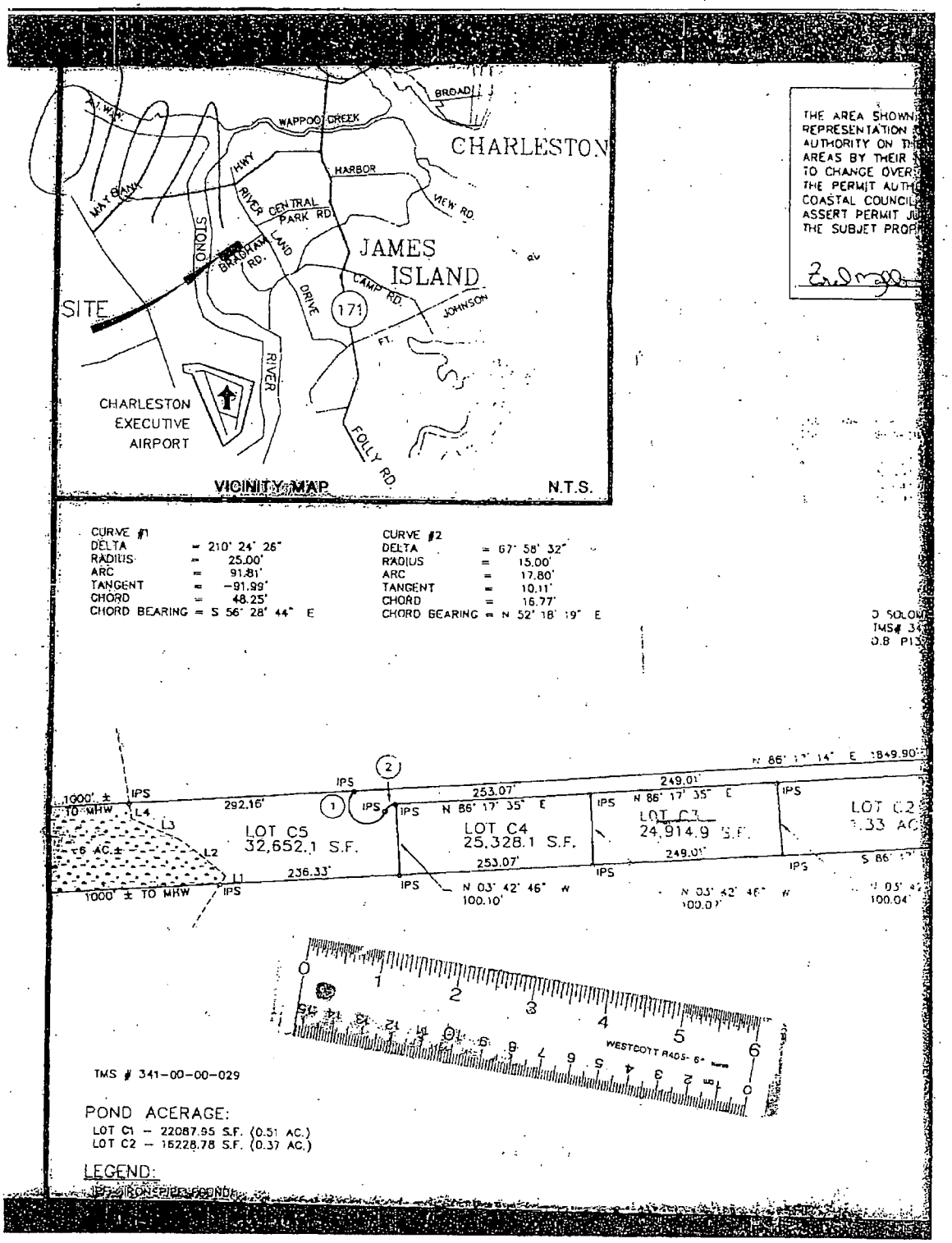
RS
)-030

RECEIVED
JUN 2 2009
CHARLESTON COUNTY
PLANNING DEPT.

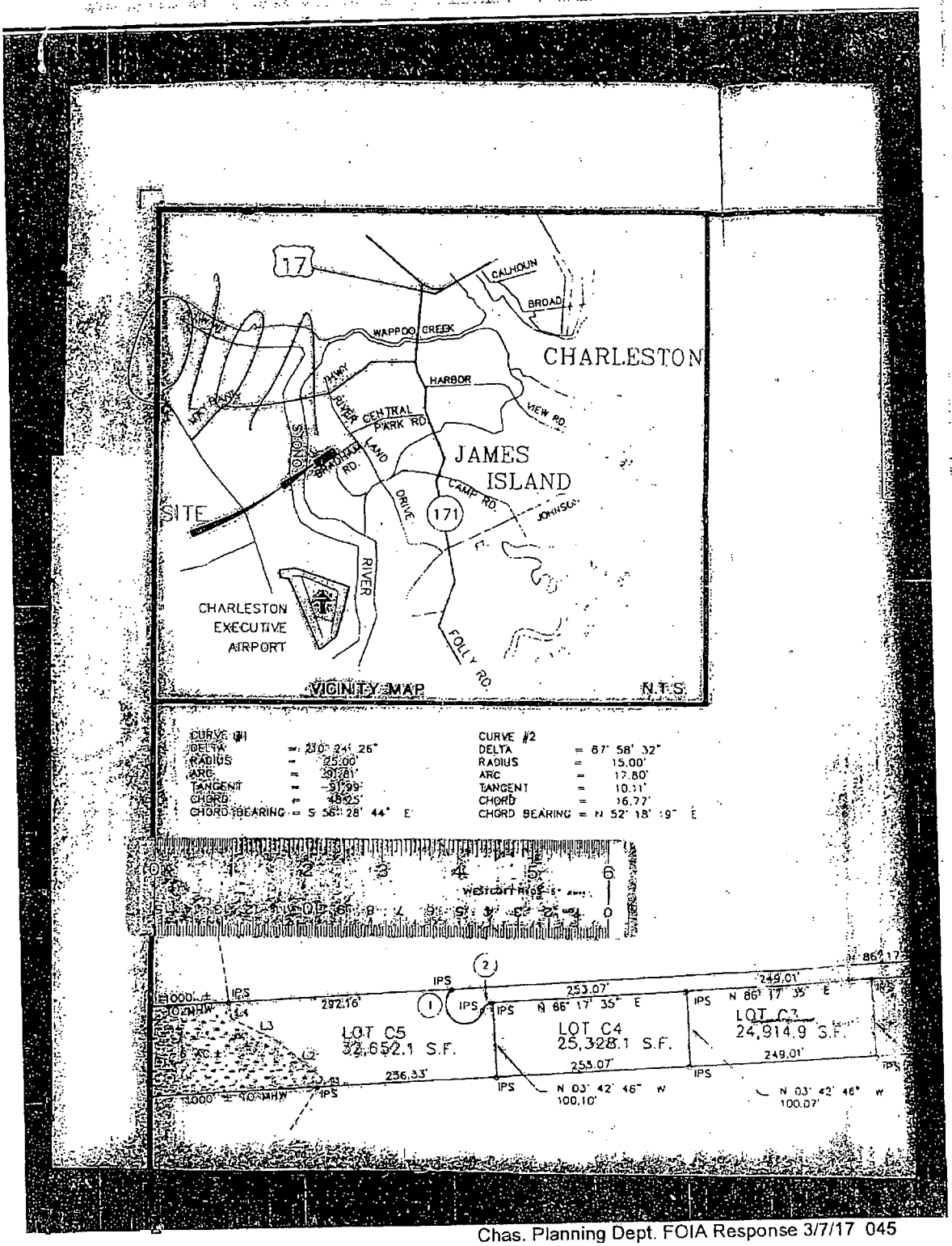
I, F. ELLIOTTE QUINN, III, A REGISTERED LAND SURVEYOR OF THE STATE OF SOUTH CAROLINA, HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY SHOWN HEREON, THAT THIS PLAT SHOWS ITS TRUE DIMENSIONS, THAT ALL NECESSARY MARKERS HAVE BEEN INSTALLED, AND THE PRECISION OF THE SURVEY IS 1:10,000, AREA DETERMINED BY RECTANGULAR COORDINATES.

F. ELLIOTTE QUINN, III, R.L.S.
S.C. REG. NO. 10292

Chas. Planning Dept. FOIA Response 3/7/17 043



Chas. Planning Dept. FOIA Response 3/7/17 044



Chas. Planning Dept. FOIA Response 3/7/17 045

THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF COASTAL COUNCIL PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERALLY DELINEATING THE PERMIT AUTHORITY OF THE COASTAL COUNCIL THE COASTAL COUNCIL IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION IN ANY CRITICAL AREA ON THE SUBJET PROPERTY WHETHER SHOWN OR NOT.

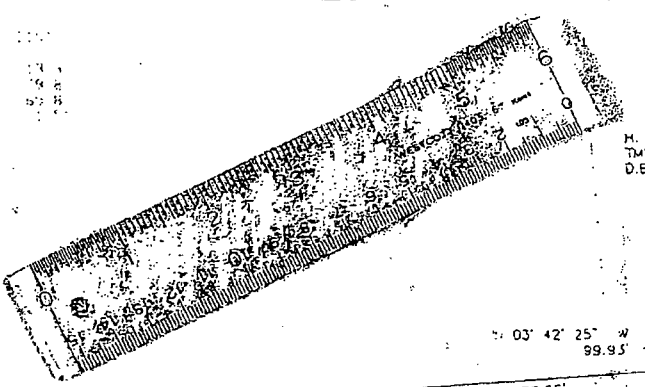
06-03-98

WE THE HEIRS OF JAMES ROPER, DO HEREBY DEDICAT 20' ROAD RIGHT-OF-WAY TO THE USE OF THE PROPE OWNERS; THE OWNERS OF THESE LOTS AND THEIR HE ASSIGNS GUARANTEE ITS MAINTENANCE.

Virginia Roper Brown

Florence R. Simmons

Lula A. Roper



H. B. SIMMONS
TMS# 341-00-
D.B. 283 PG 4

Q SOLOMON
TMS# 341-00-00-028
D.B. P137 PG 344

N 03° 42' 25" W
99.95'

N 86° 17' 14" E 1849.90' (TOTAL)

577.59'

N 86° 17' 35" E

ROPER ROAD 20' R/W

578.55'

N 86° 17' 35" E

IPS

LOT C2
1.33 AC.

577.59'

S 86° 17' 14" W 1894.53' (TOTAL)

578.54'

1.33 AC.

N 03° 42' 46" W
100.04'

N 03° 42' 46" W
99.98'

DOLLY ROBINSON
TMS# 341-00-00-028

Chas. Planning Dept. FOIA Response 3/7/17 046

IRS OF JAMES ROPER, DO HEREBY DEDICATE TH
RIGHT-OF-WAY TO THE USE OF THE PROPERTY
HE OWNERS OF THESE LOTS AND THEIR HEIRS AN
UARANTEE ITS MAINTENANCE.

Virginia Roper Brown

Florence R. Fleming

Julia R. Roper

R. B. SIMMONS
TMS# 341-00-
D.B. 283 PG. 42

S 93° 42' 25" W
99.93'

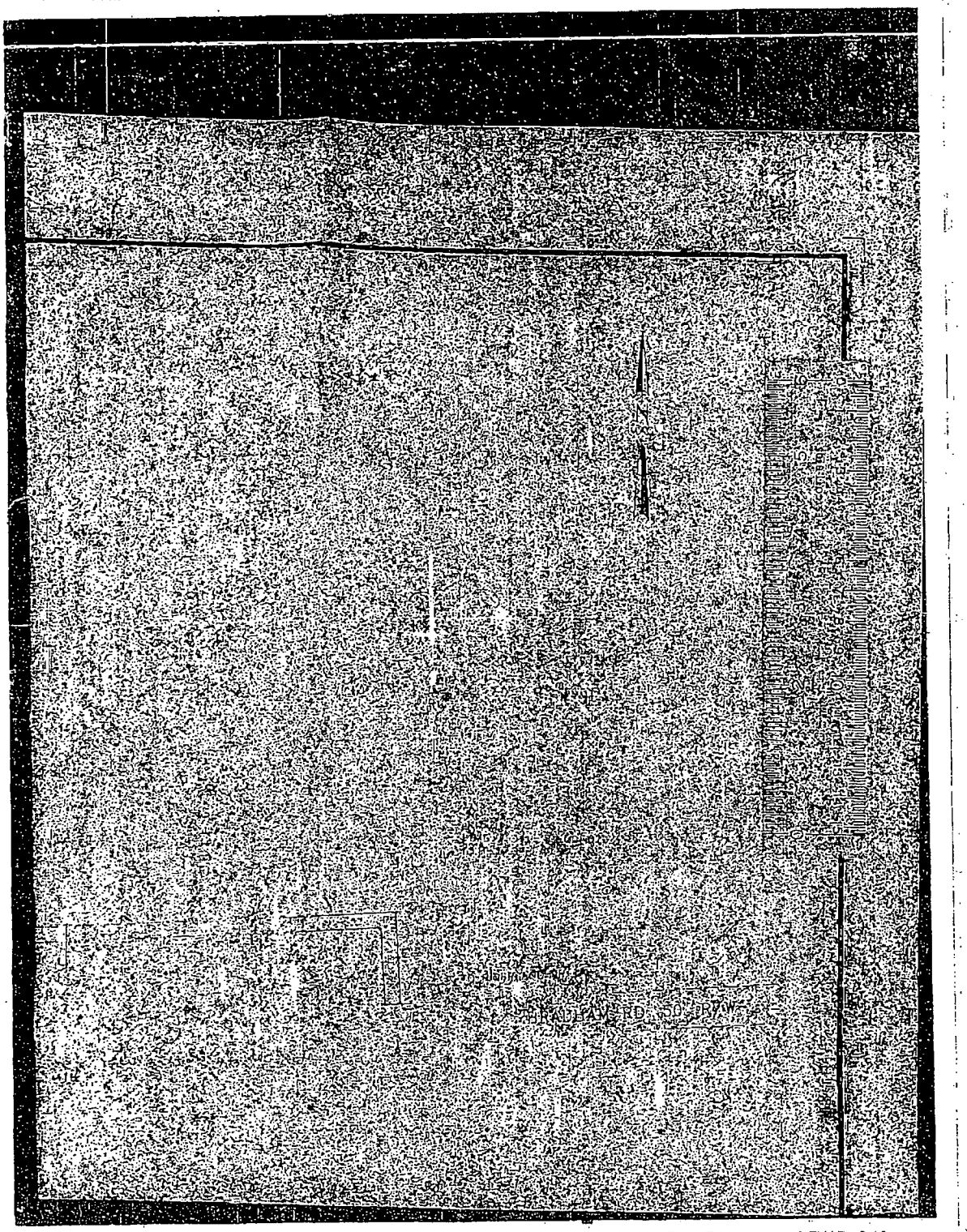
578.55'

S 86° 17' 35" E

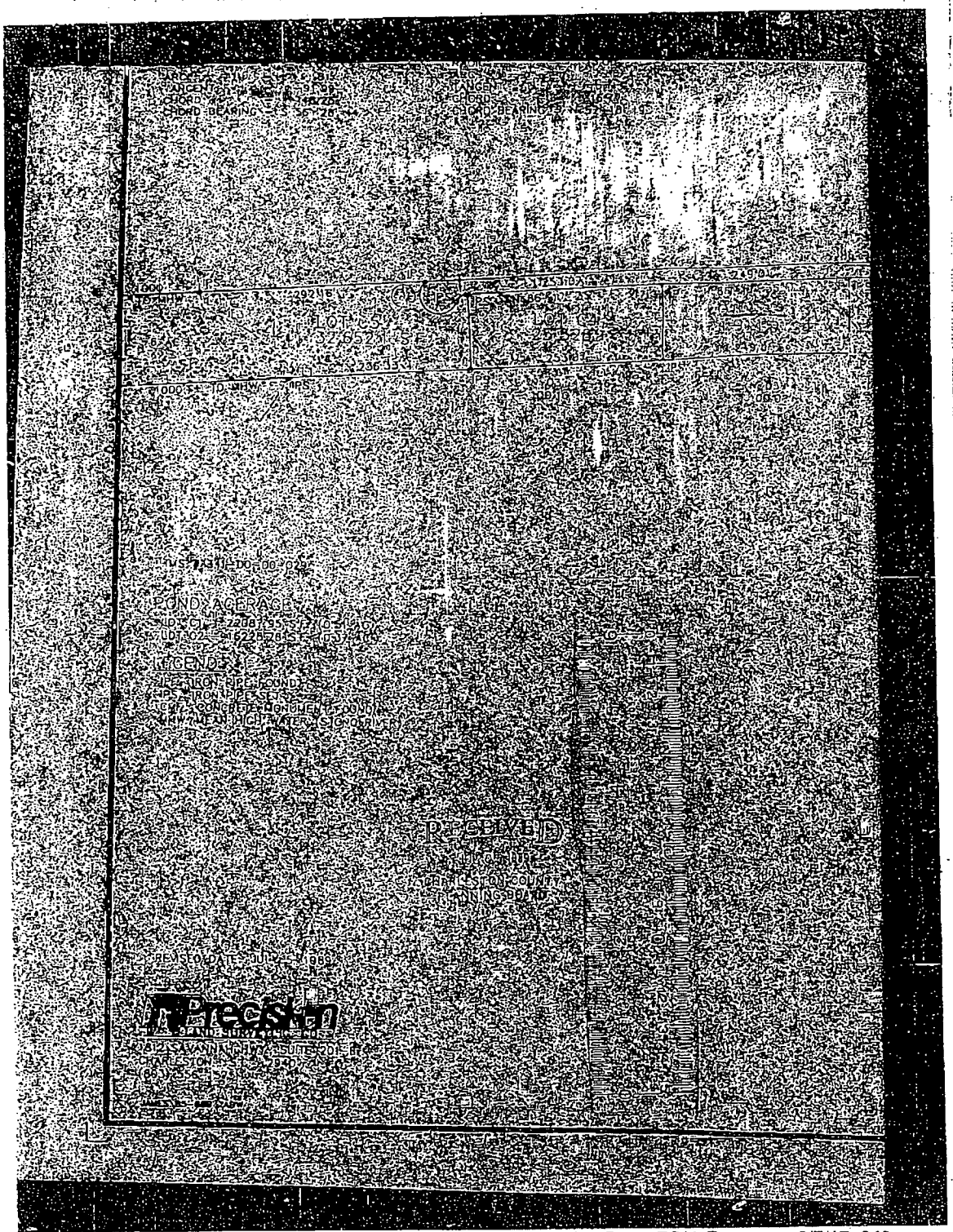
38.54'

BR

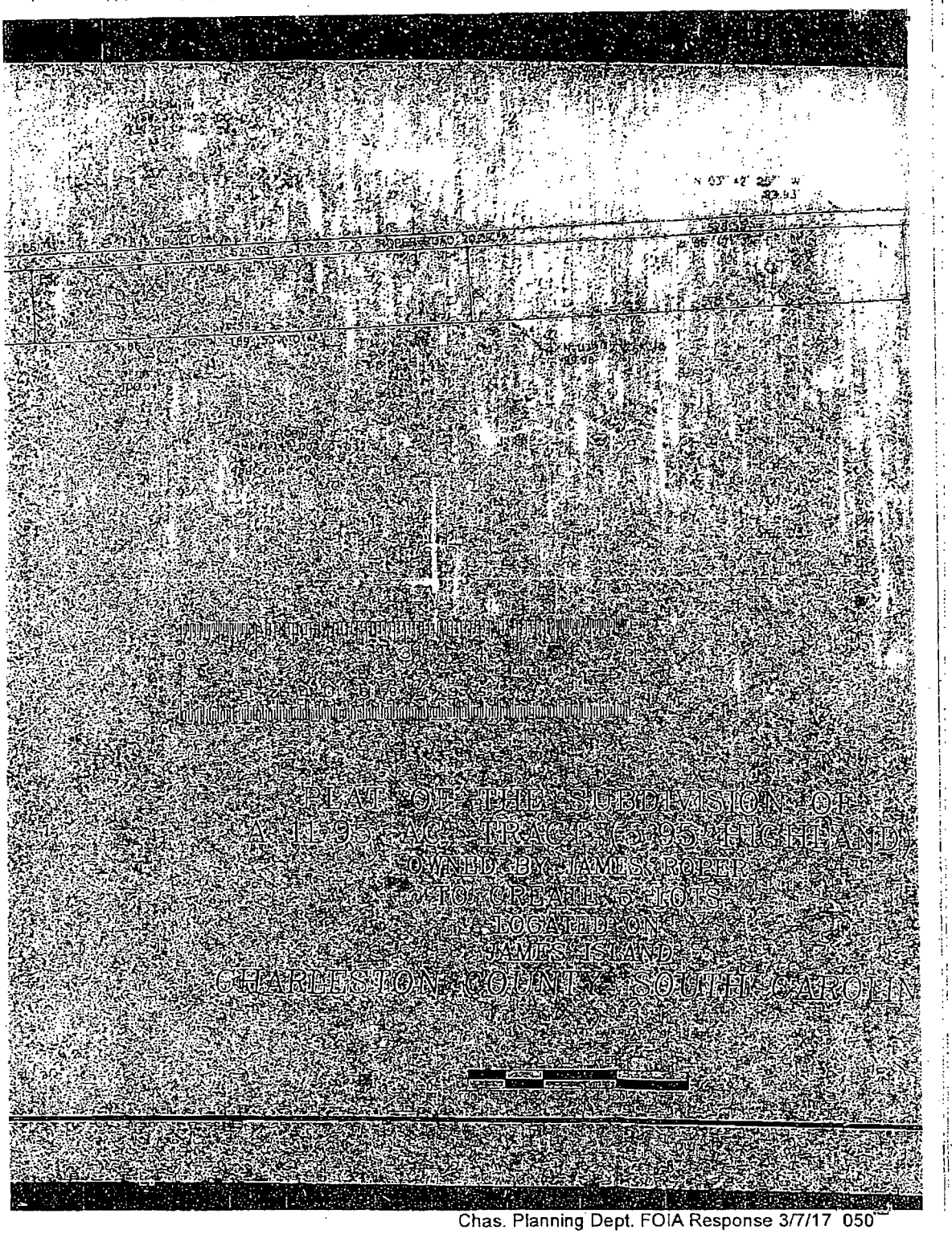
Chas. Planning Dept. FOIA Response 3/7/17 047



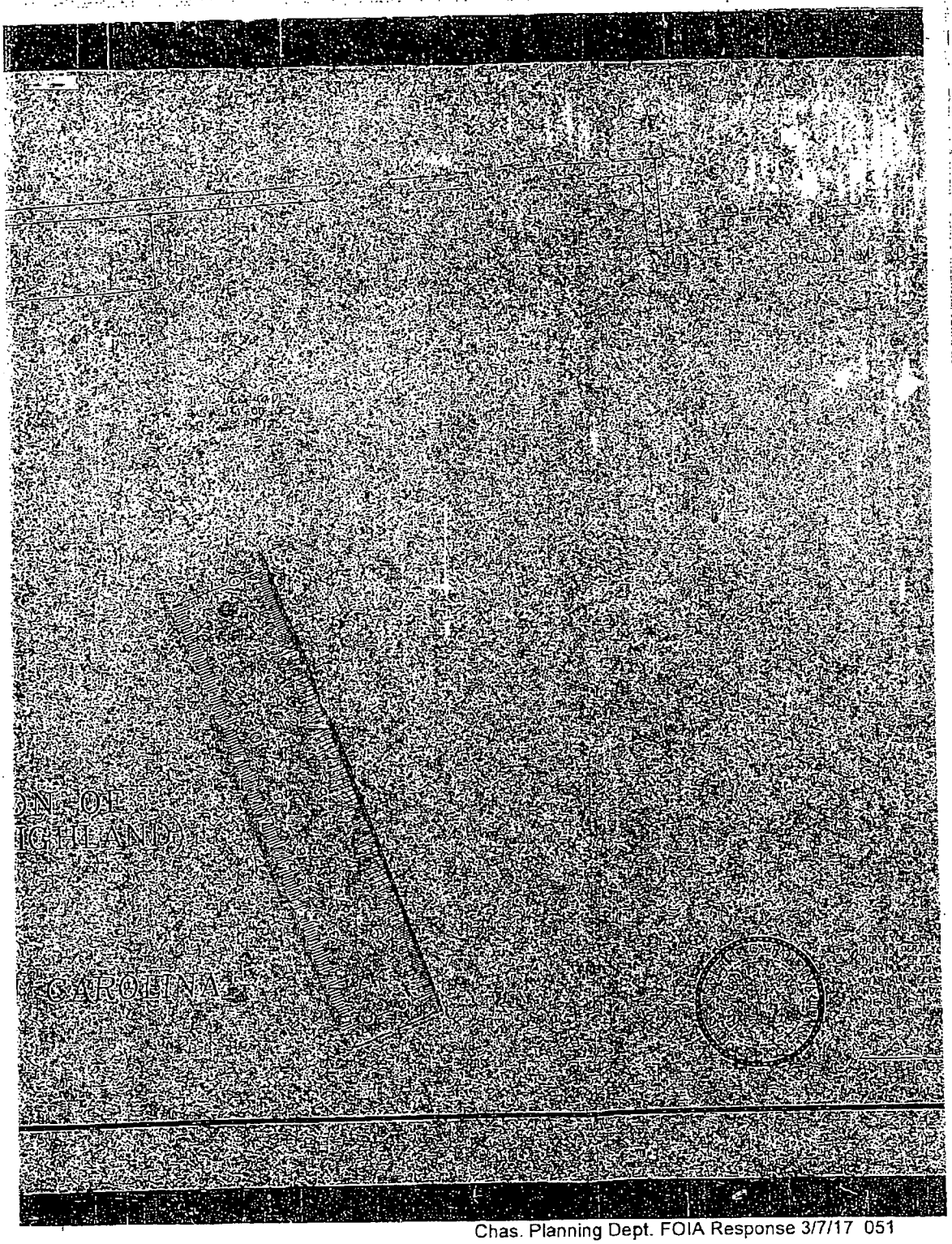
Chas. Planning Dept. FOIA Response 3/7/17 048



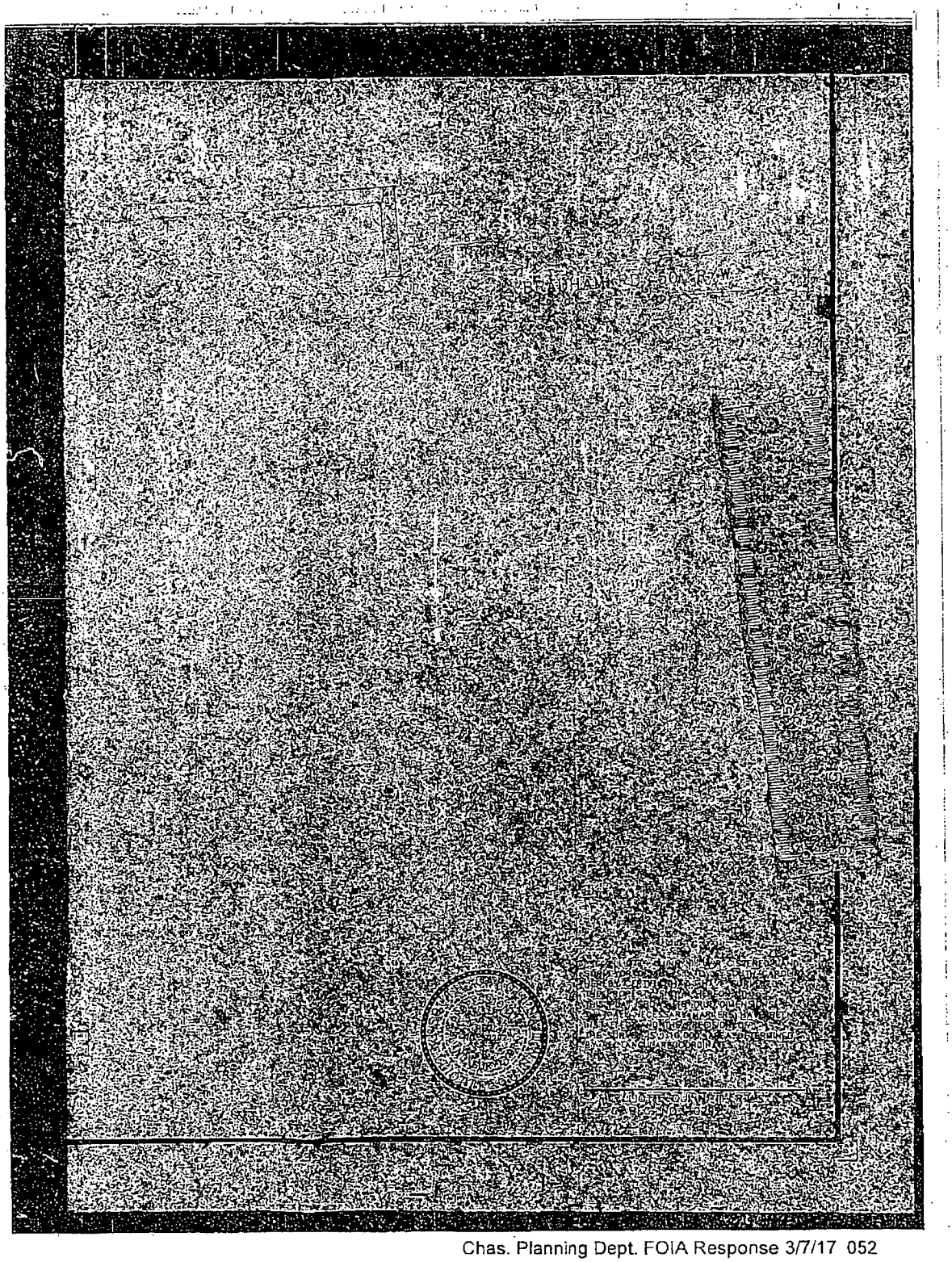
Chas. Planning Dept. FOIA Response 3/7/17 049



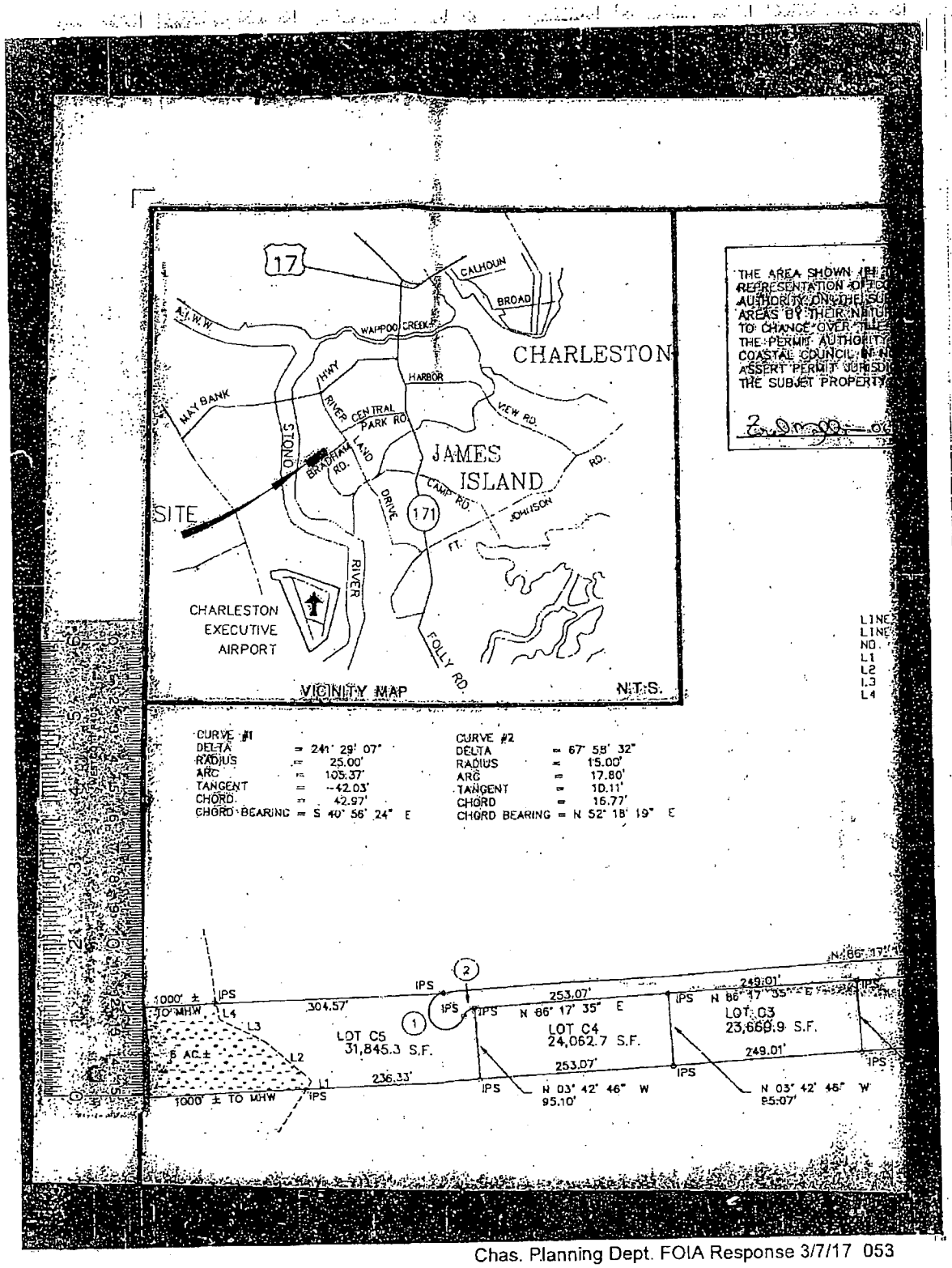
Chas. Planning Dept. FOIA Response 3/7/17 050



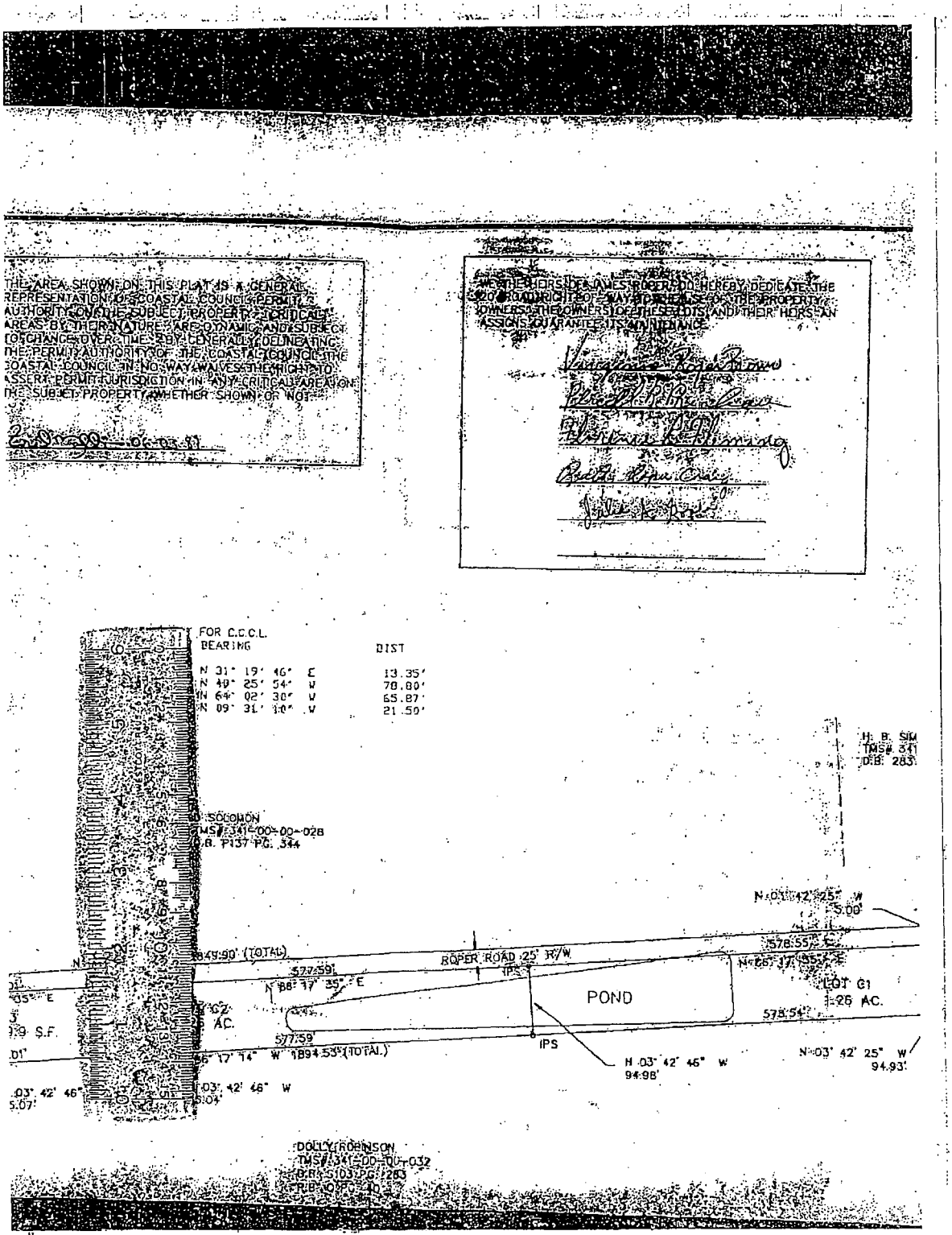
Chas. Planning Dept. FOIA Response 3/7/17 051



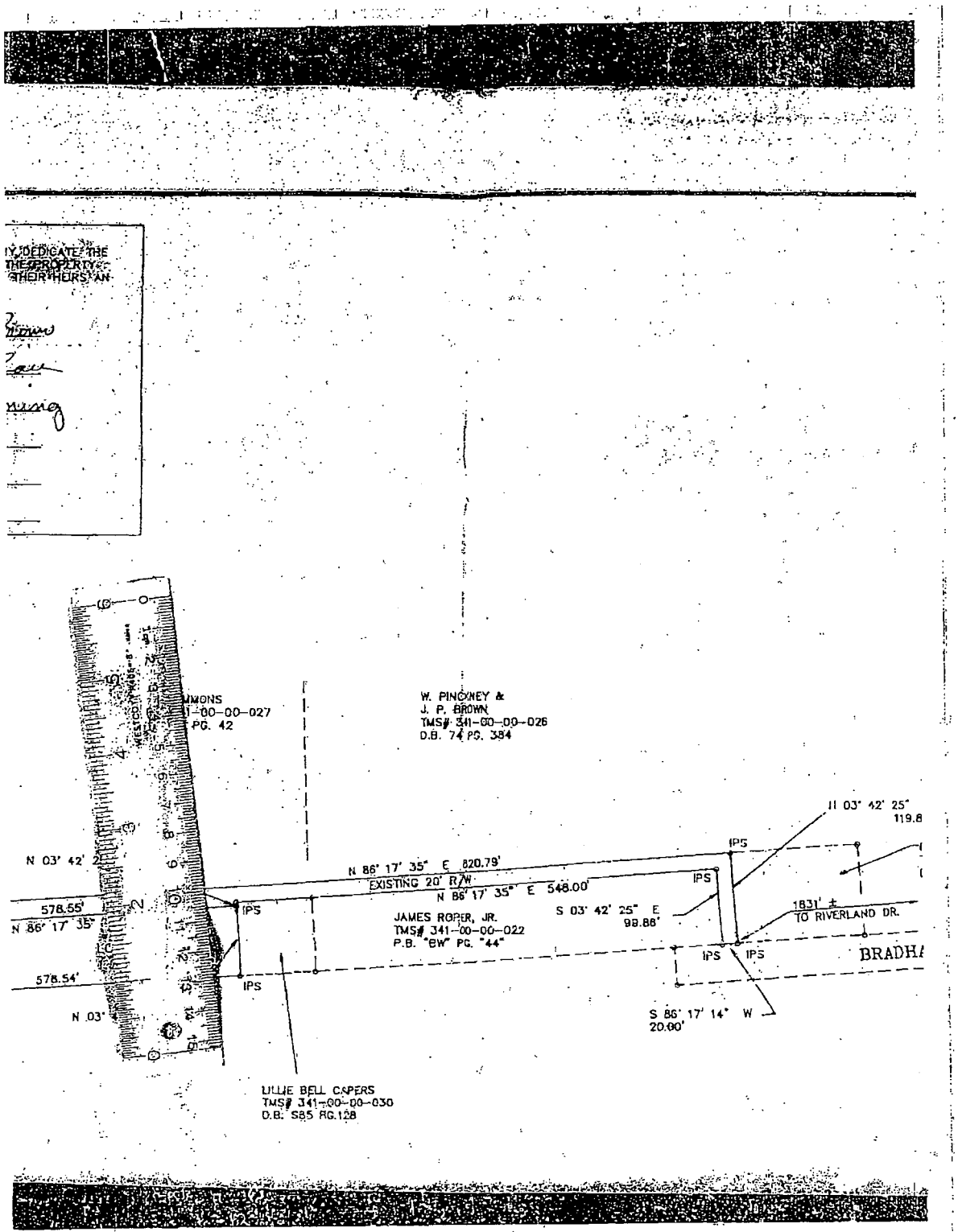
Chas. Planning Dept. FOIA Response 3/7/17 052



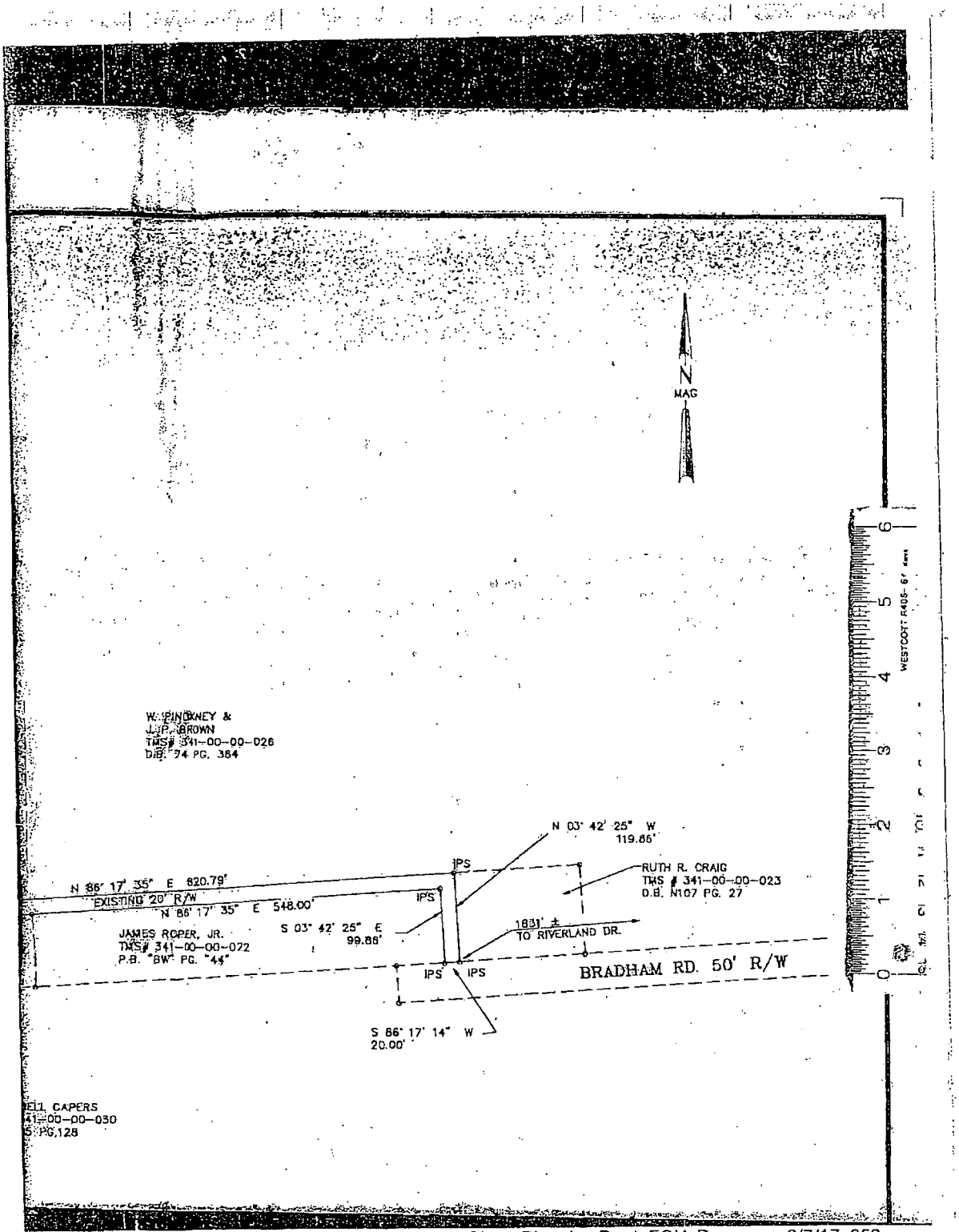
Chas. Planning Dept. FOIA Response 3/7/17 053



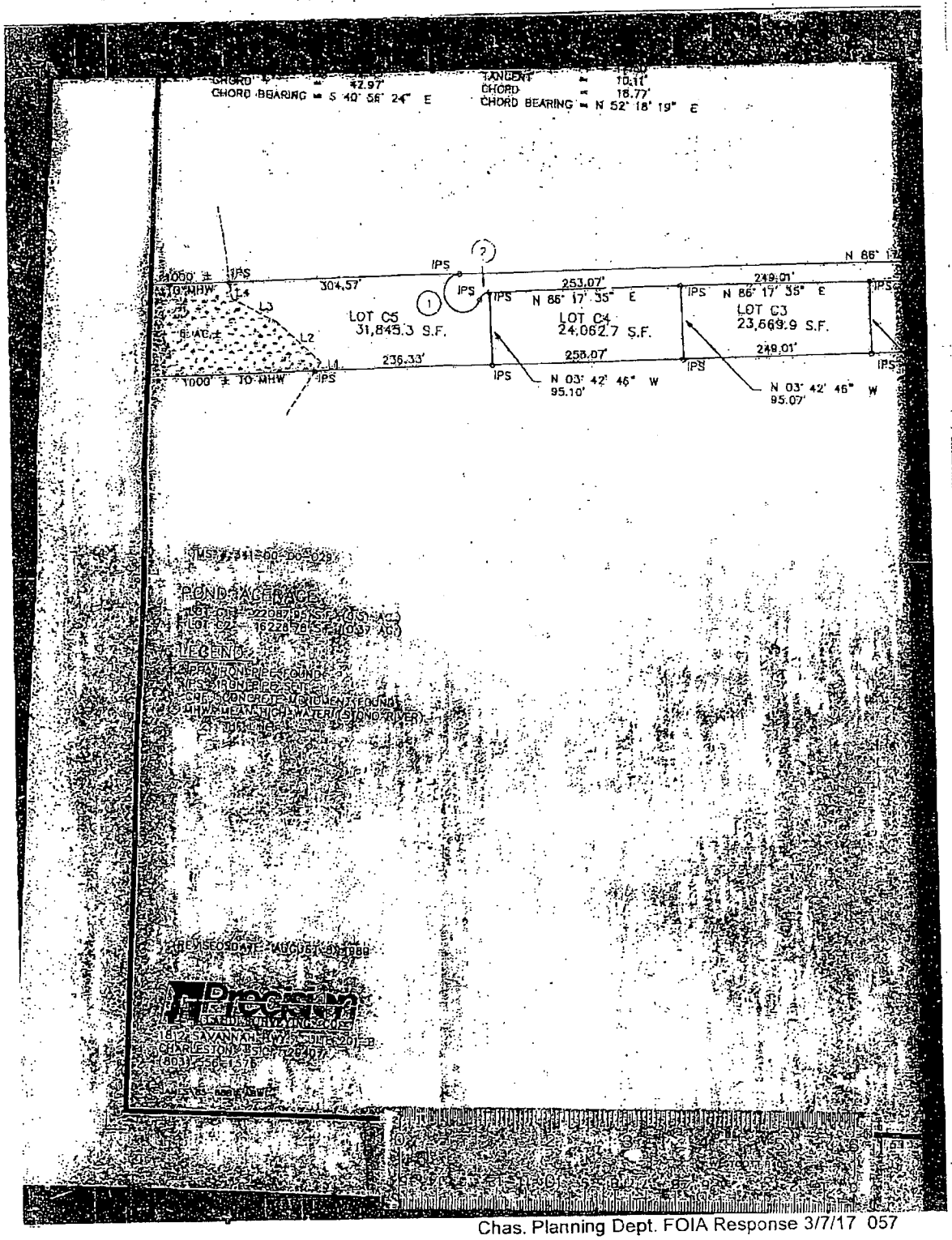
Chas. Planning Dept. FOIA Response 3/7/17 054



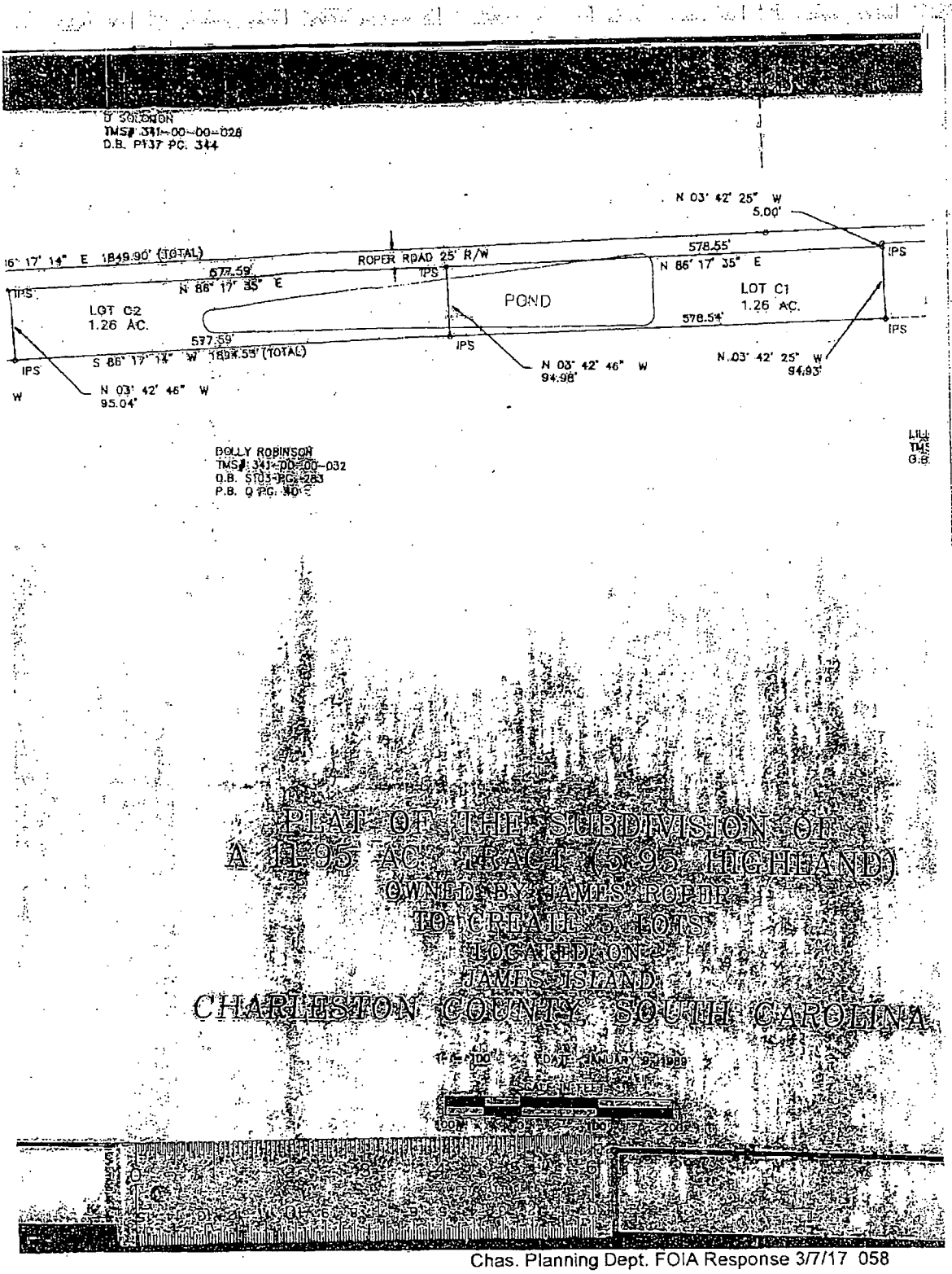
Chas. Planning Dept. FOIA Response 3/7/17 055



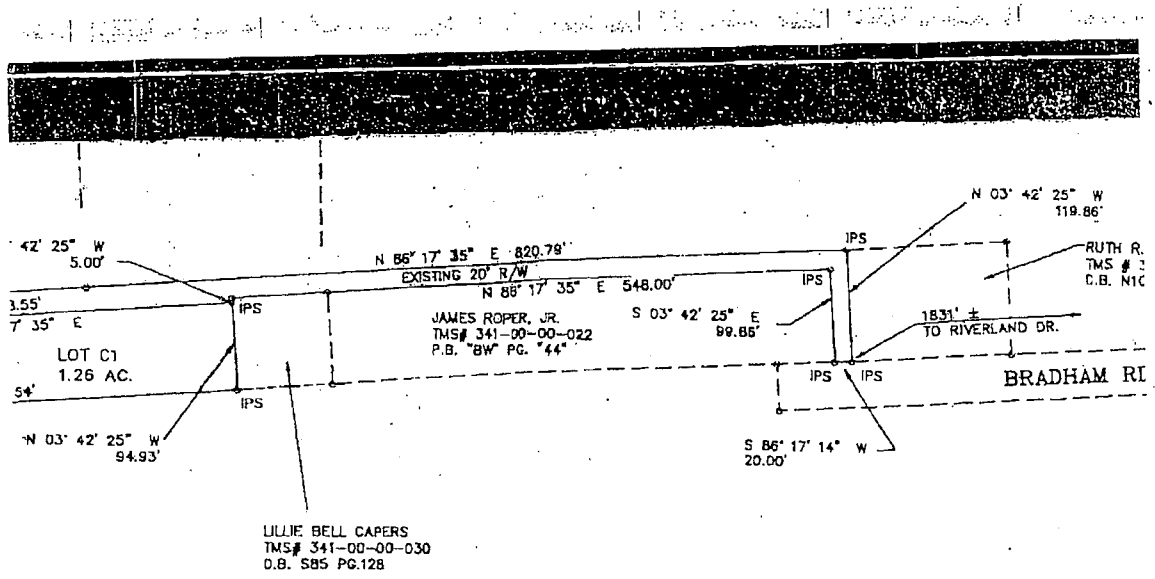
Chas. Planning Dept. FOIA Response 3/7/17 056



Chas. Planning Dept. FOIA Response 3/7/17 057



Chas. Planning Dept. FOIA Response 3/7/17 058



ON OF
IGHLAND)
R

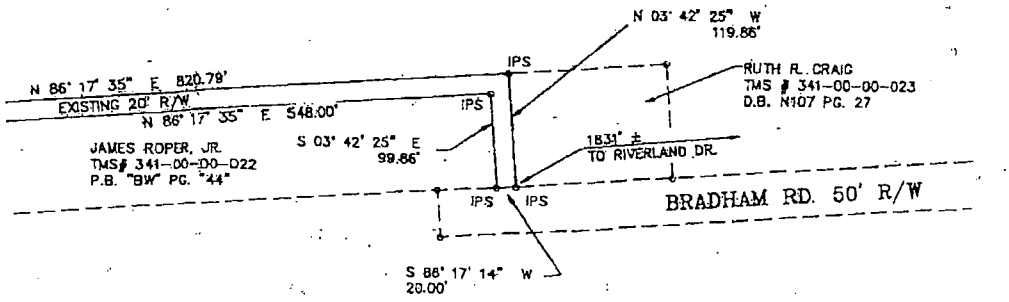
I CAROLINA

I, F. ELLIOTTE O
SURVEYOR OF TI
HEREBY CERTIFY
THIS PROPERTY
THIS PLAT SHOW
THAT ALL NECES
INSTALLED, AND
THE SURVEY IS
BY RECTANGULA

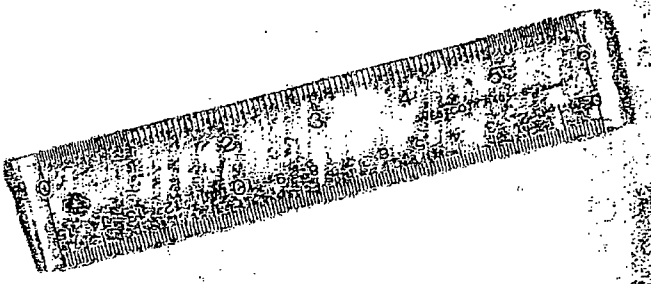
REG. NO. 10292

F. ELLIOTTE
S.C. REG. N

Chas. Planning Dept. FOIA Response 3/7/17 059



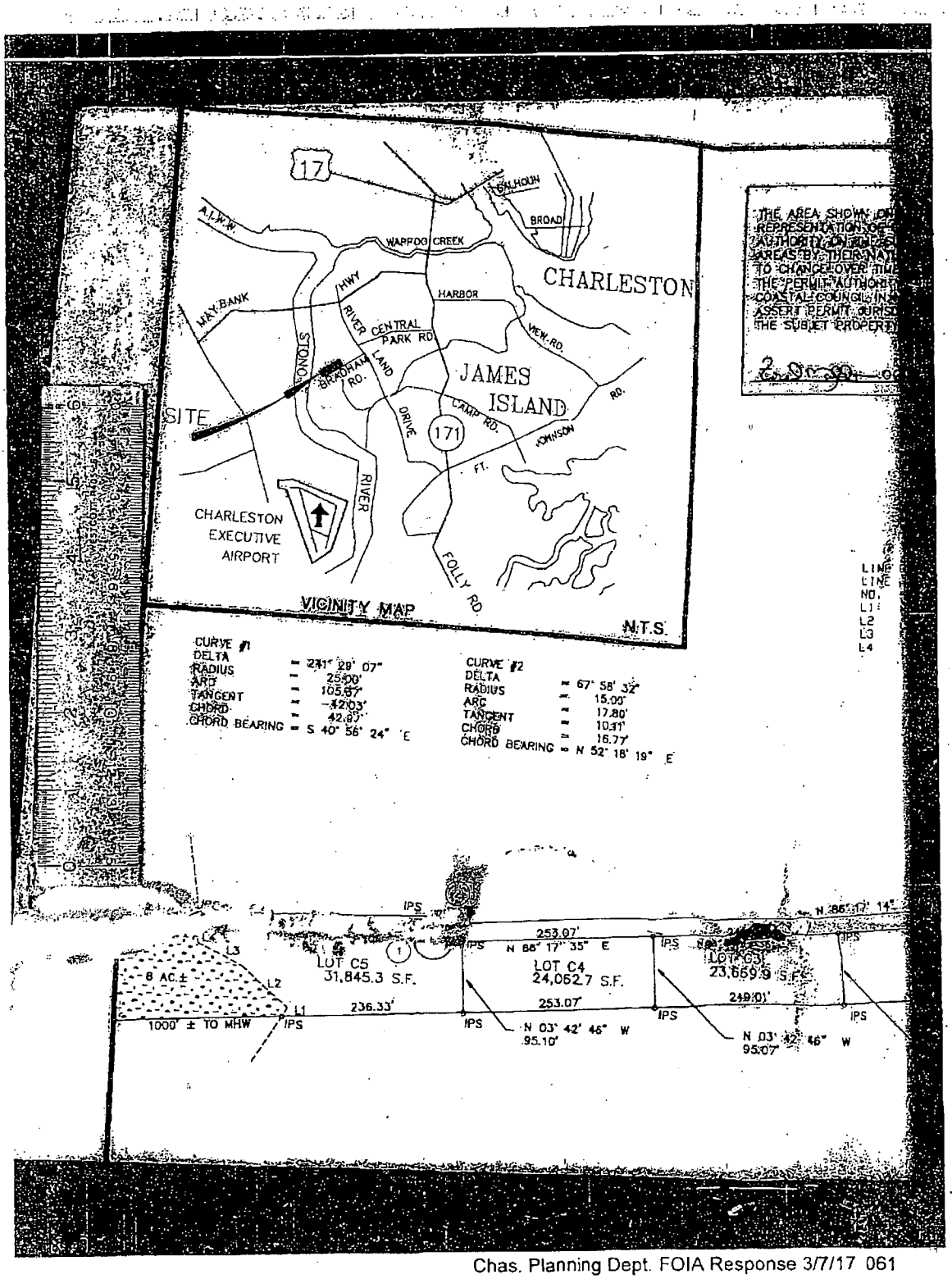
CAPERS
10-90-030
128



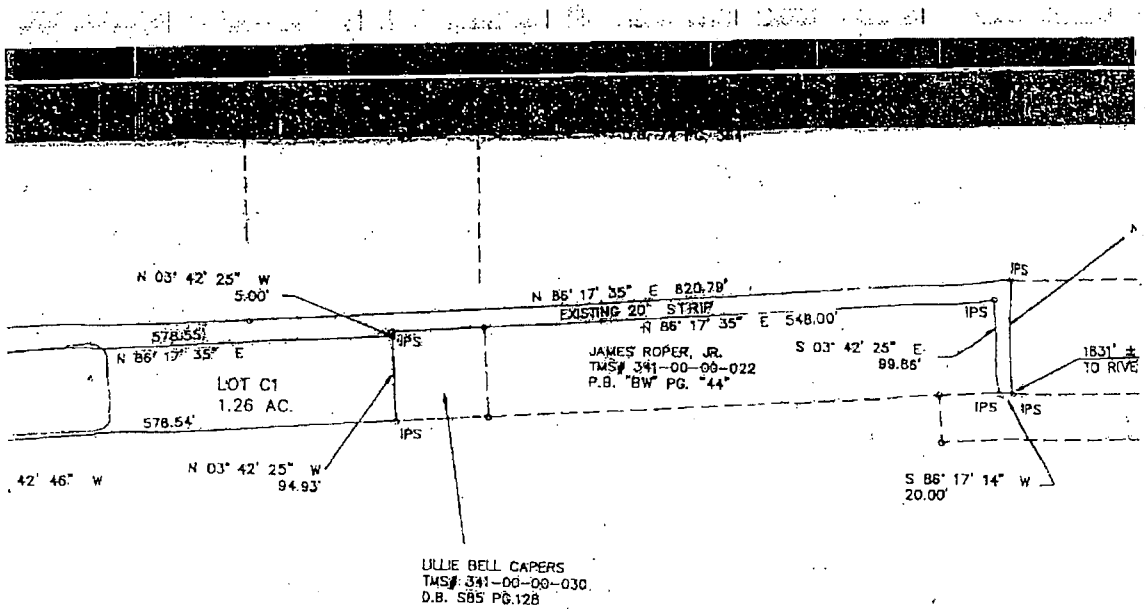
I, F. ELLIOTTE QUINN, III, A REGISTERED LAND SURVEYOR OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY SHOWN HEREON AND THIS PLAT SHOWS ITS TRUE DIMENSIONS; THAT ALL NECESSARY MARKERS HAVE BEEN INSTALLED; AND THE PRECISION OF THE SURVEY IS 1:10,000. AREA DETERMINED BY RECTANGULAR COORDINATES.

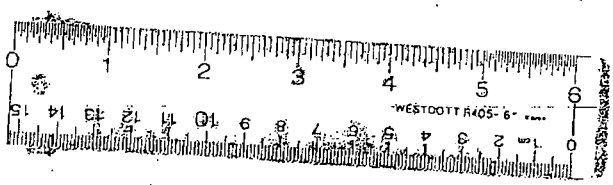
F. ELLIOTTE QUINN, III, R.L.S.
S.C. REG. NO. 10292

Chas. Planning Dept. FOIA Response 3/7/17 060



Chas. Planning Dept. FOIA Response 3/7/17 061



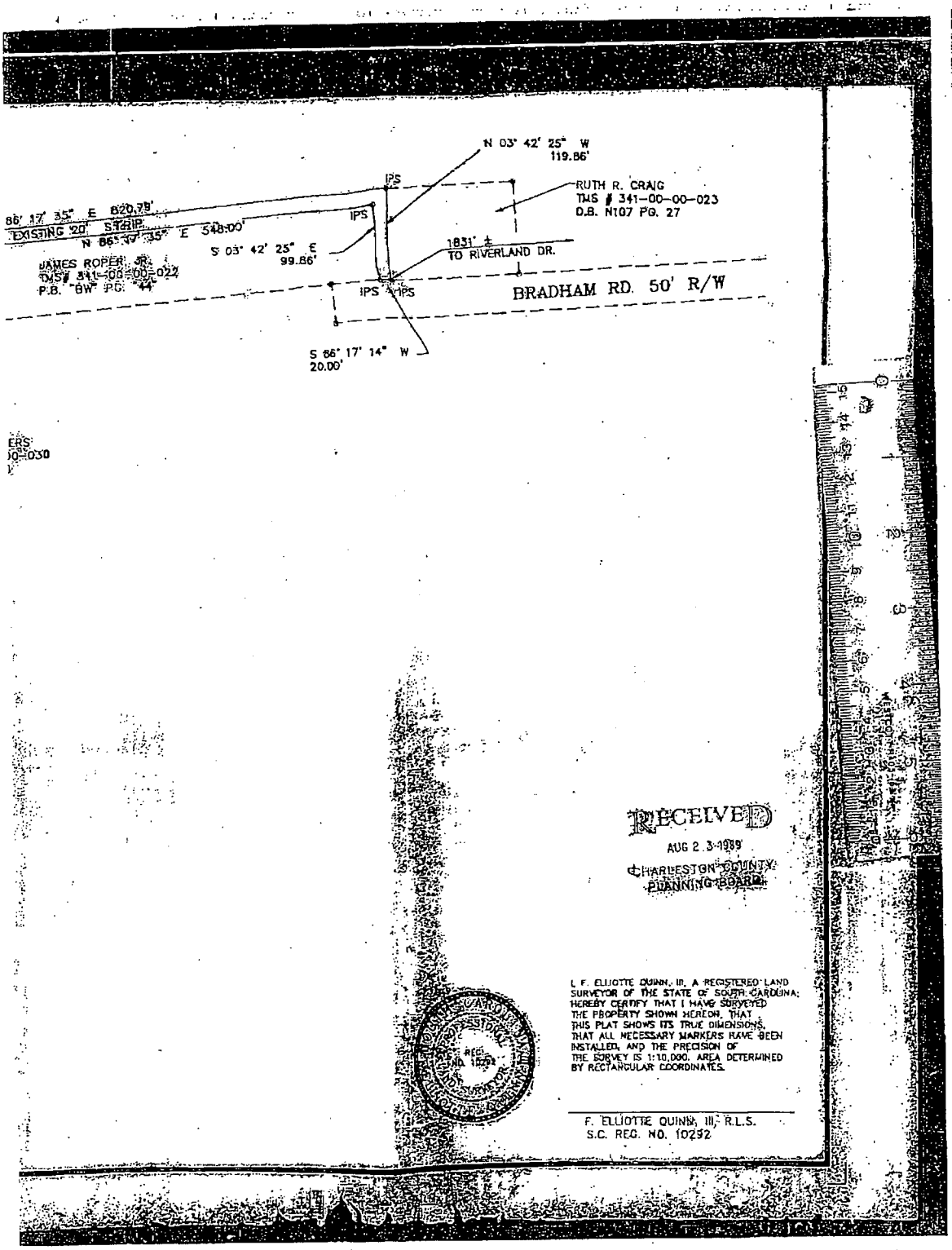


UBDIVISION OF
(5.95 HIGHLAND)
MES ROPER
5 LOTS
) ON
HLAND
, SOUTH CAROLINA

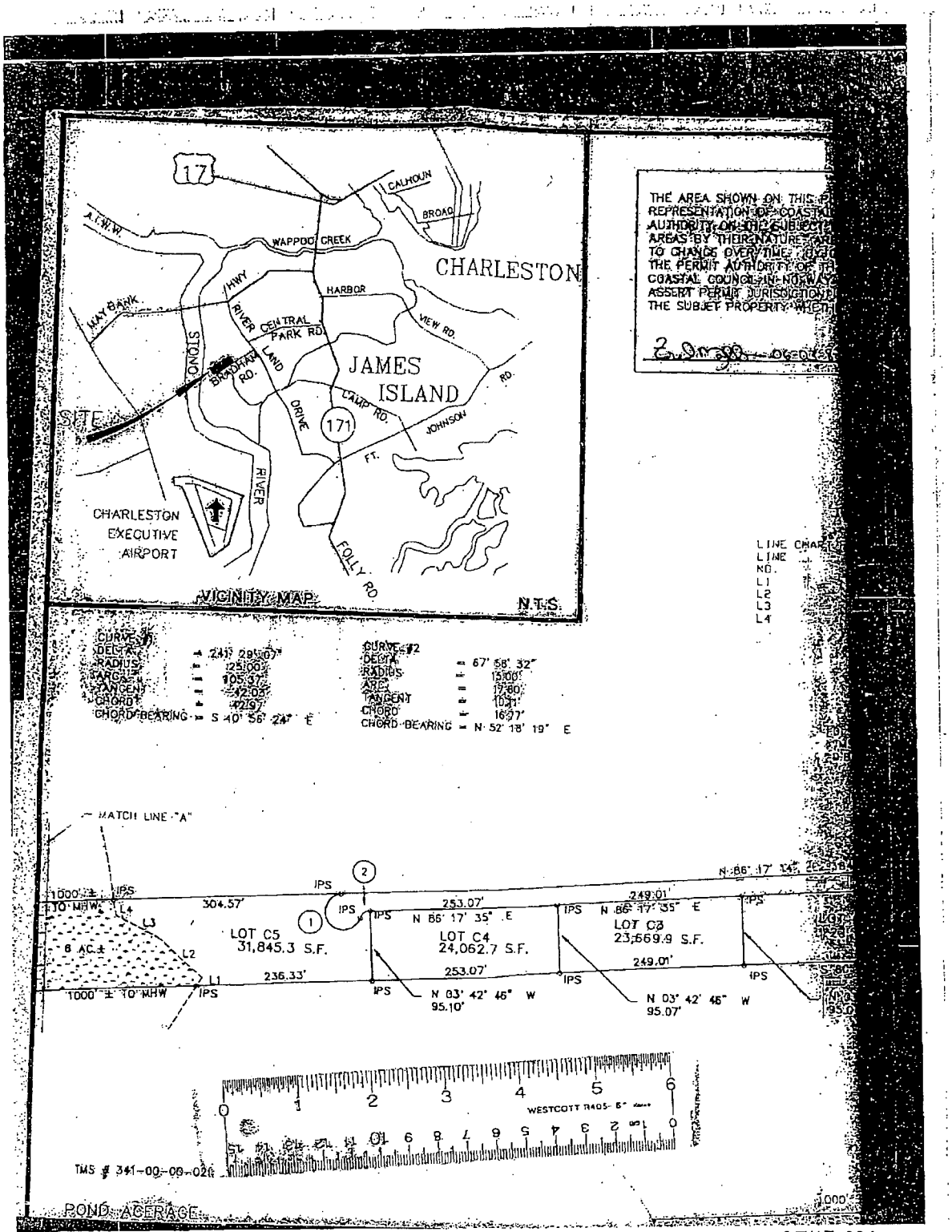
JANUARY 9, 1986

EET.
100 200

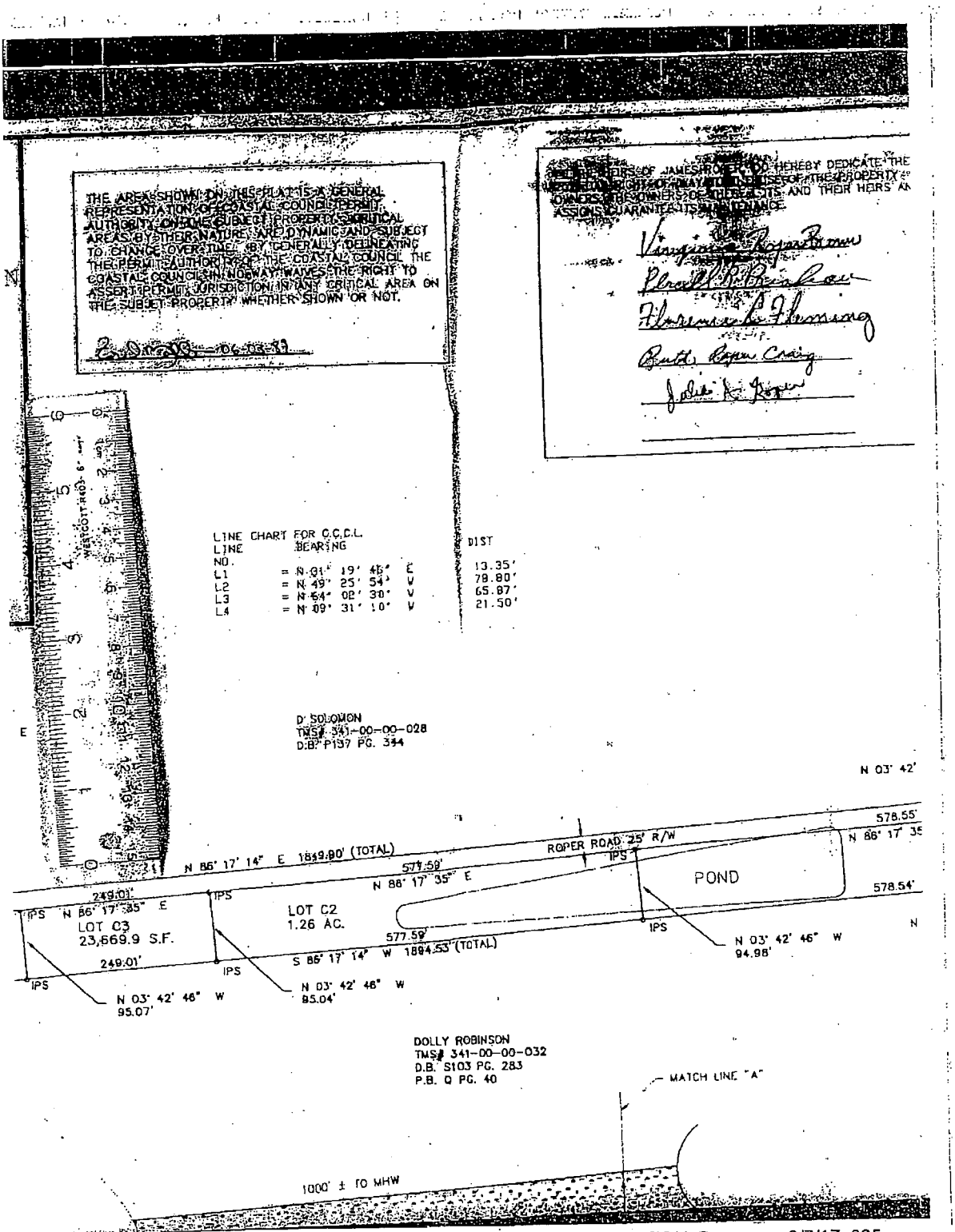
Chas. Planning Dept. FOIA Response 3/7/17 062



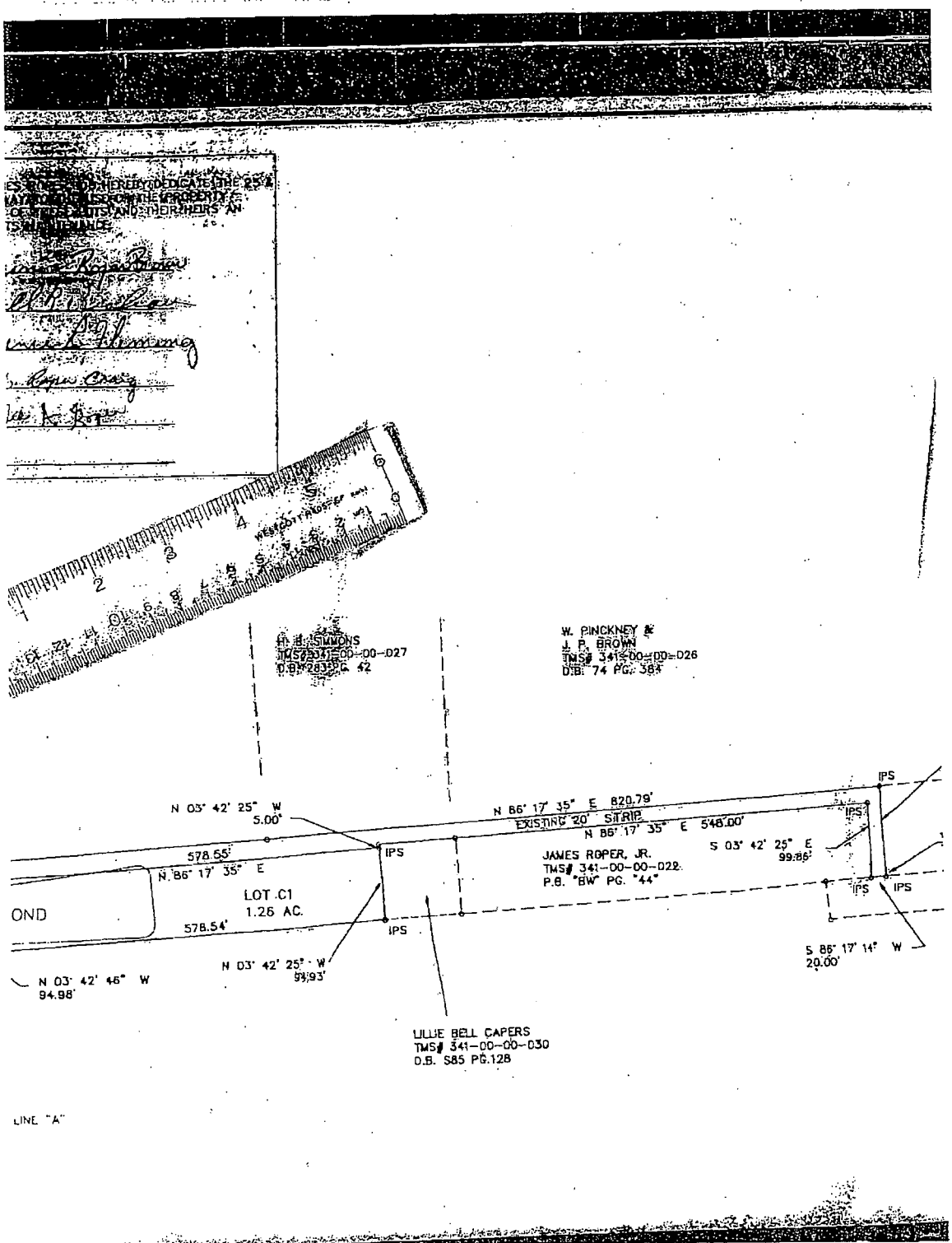
Chas. Planning Dept. FOIA Response 3/7/17 063



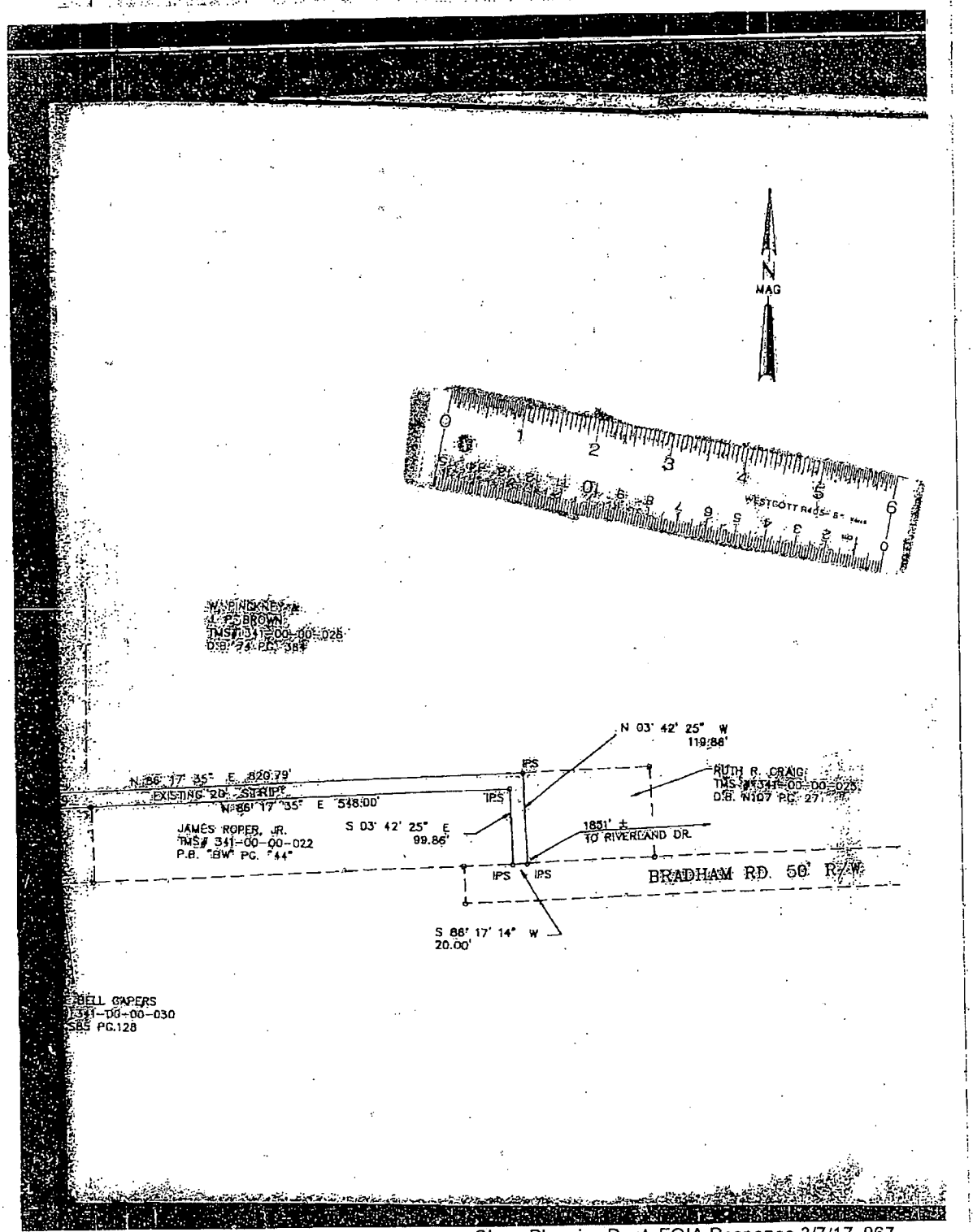
Chas. Planning Dept. FOIA Response 3/7/17 064



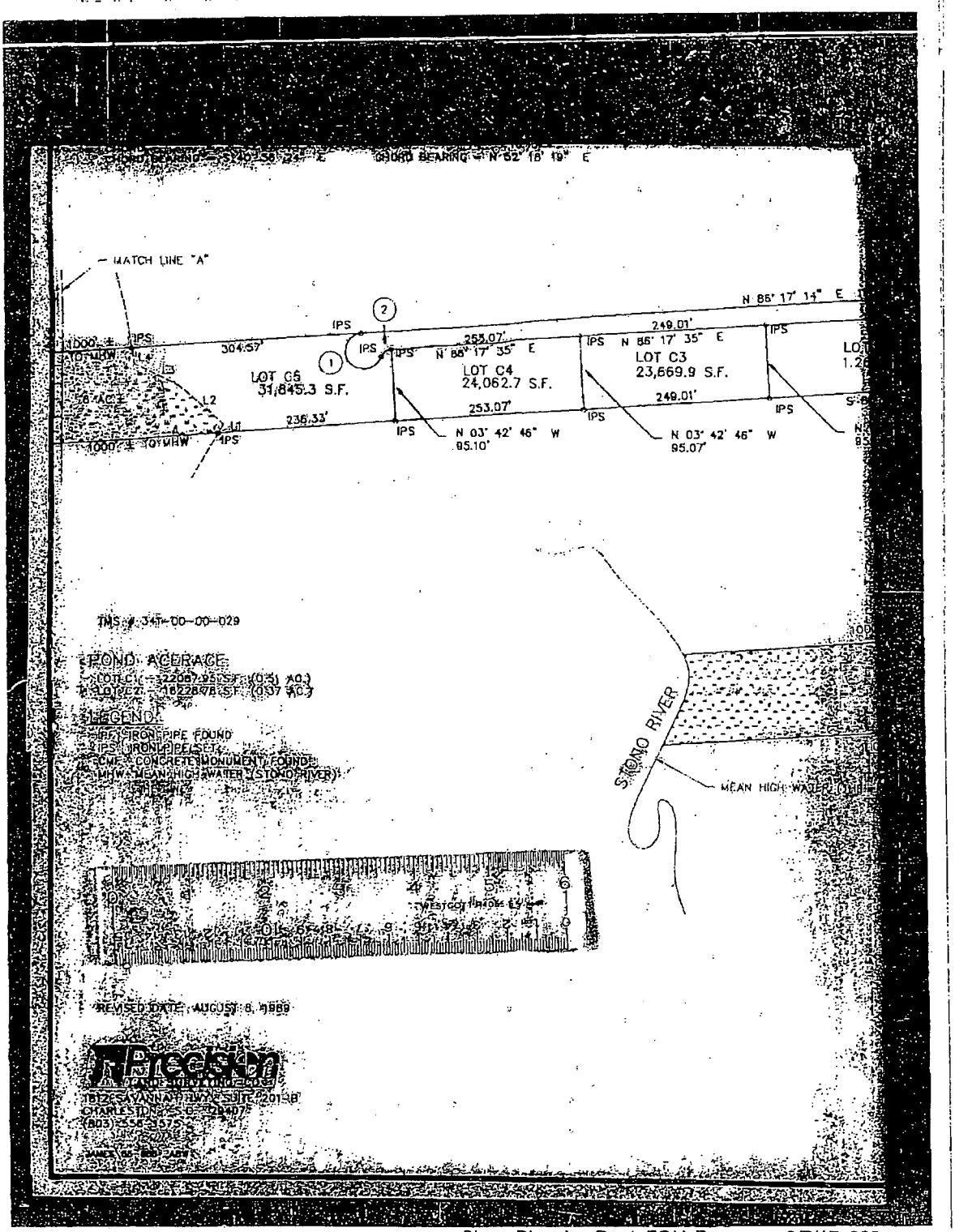
Chas. Planning Dept. FOIA Response 3/7/17 065



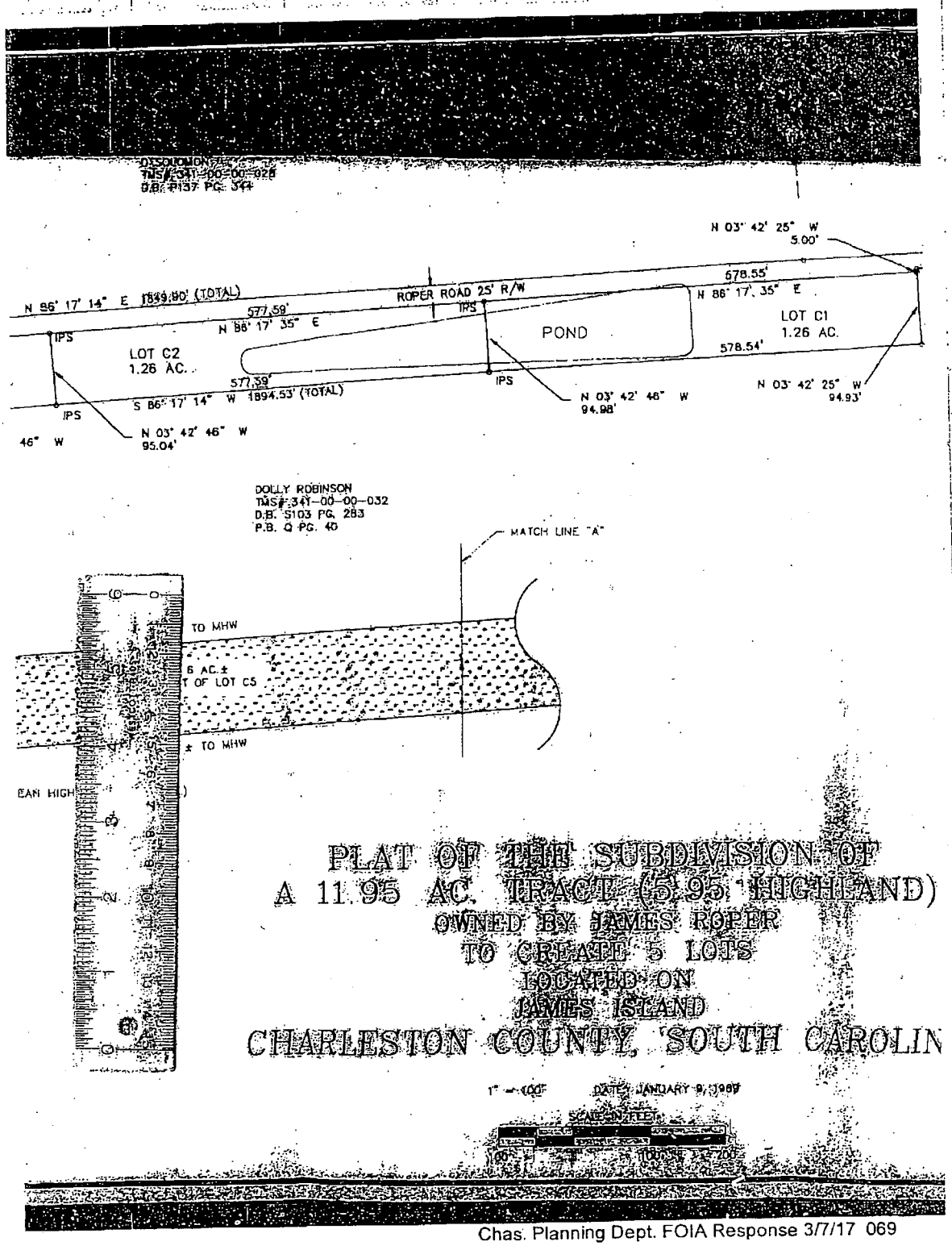
Chas. Planning Dept. FOIA Response 3/7/17 066



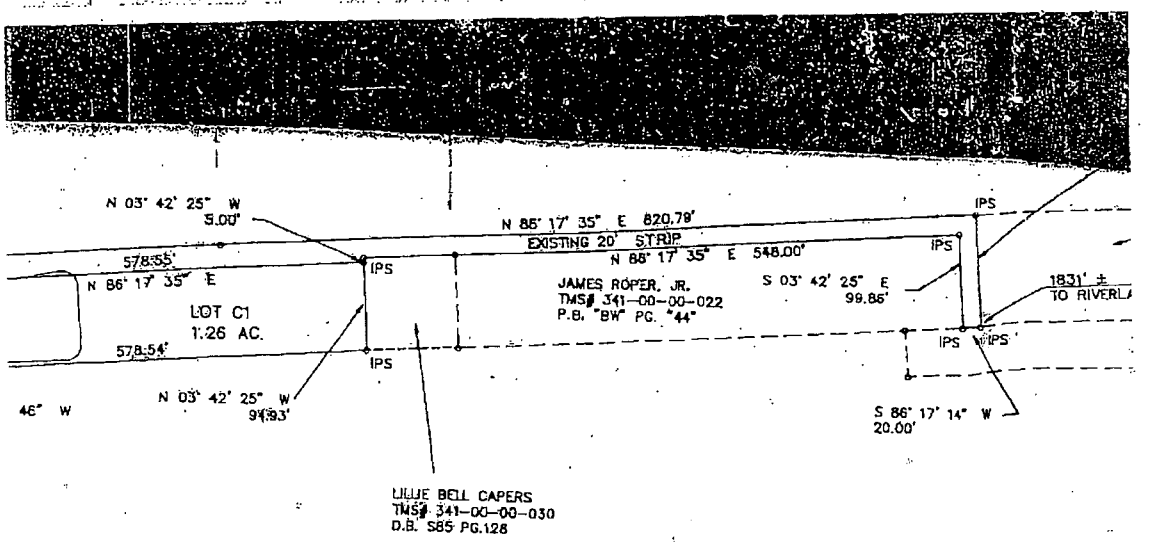
Chas. Planning Dept. FOIA Response 3/7/17 067

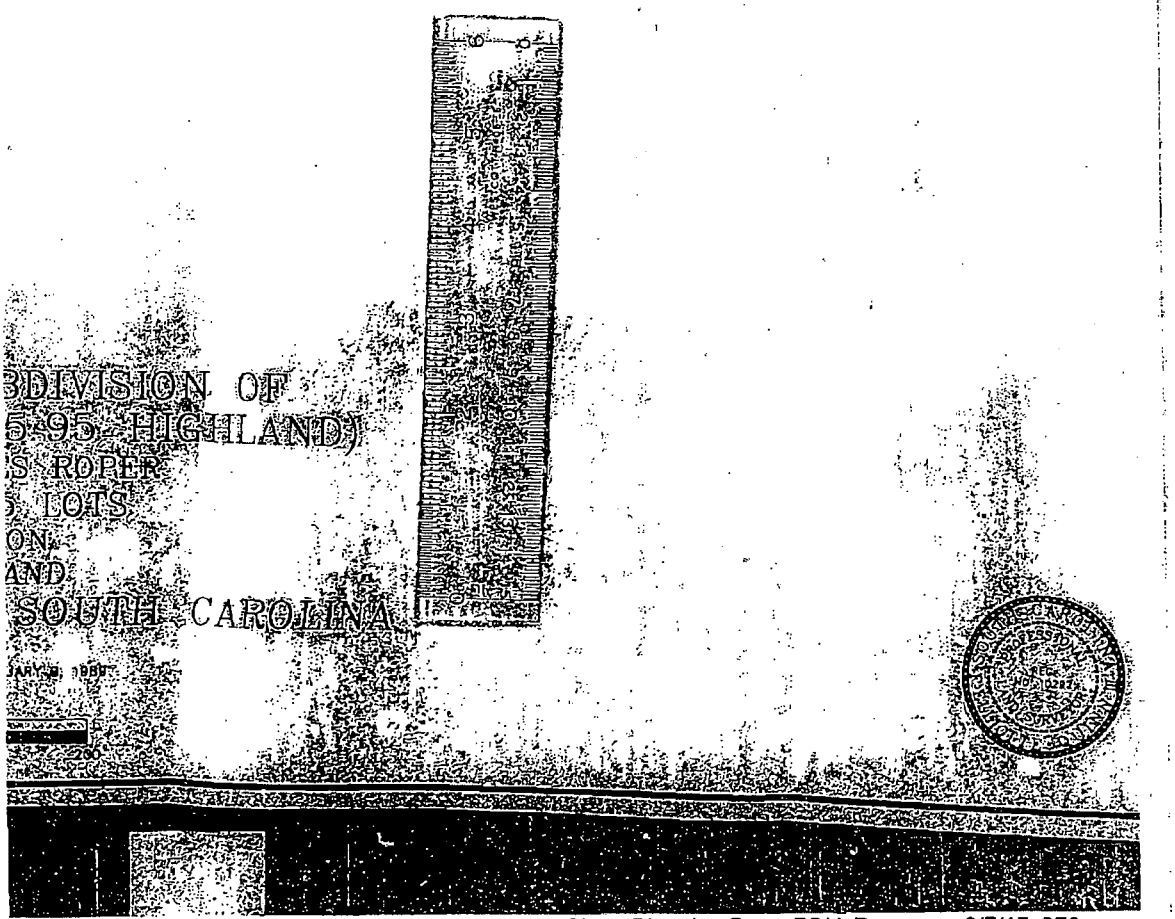


Chas. Planning Dept. FOIA Response 3/7/17 068

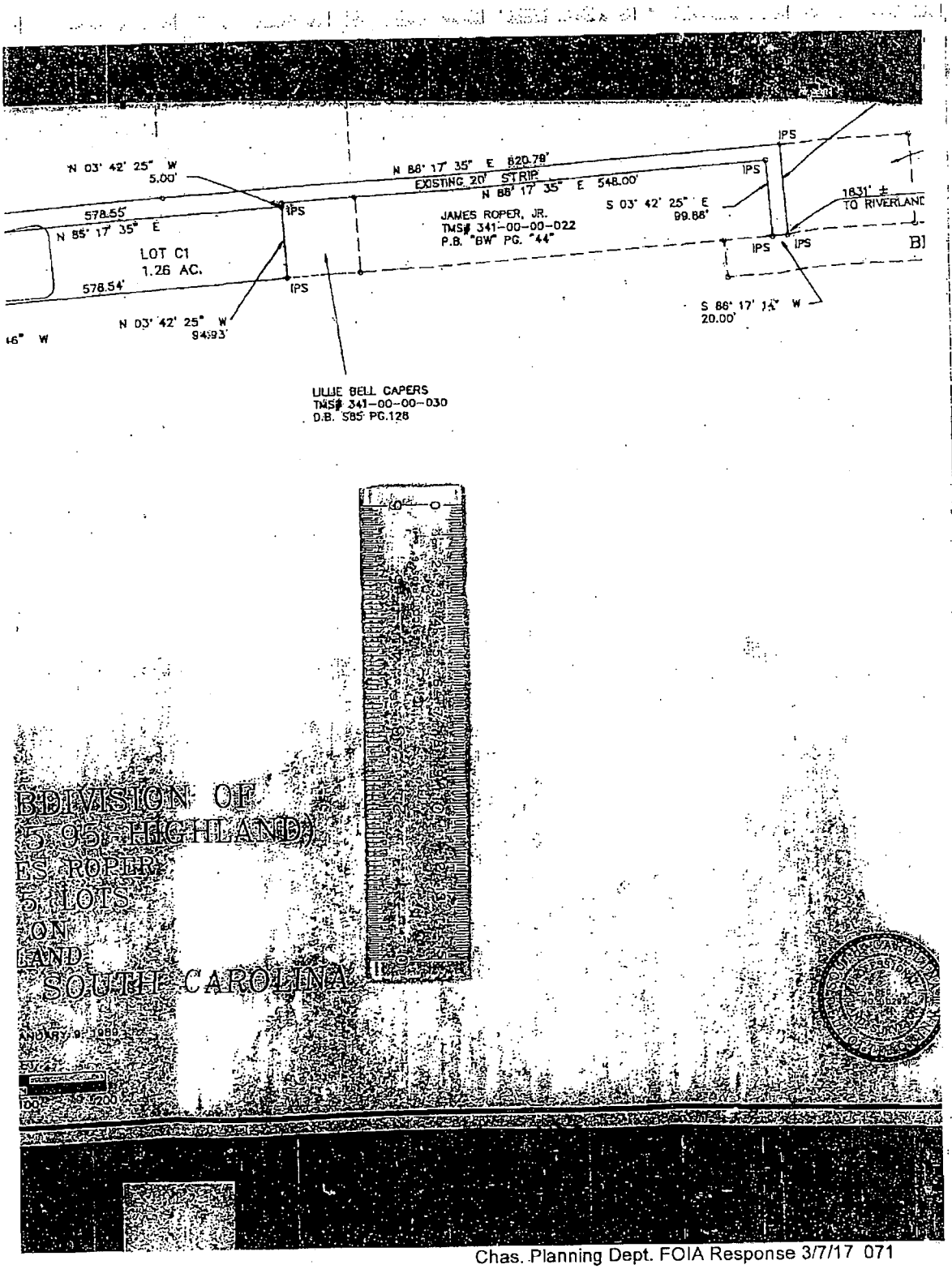


Chas. Planning Dept. FOIA Response 3/7/17 069

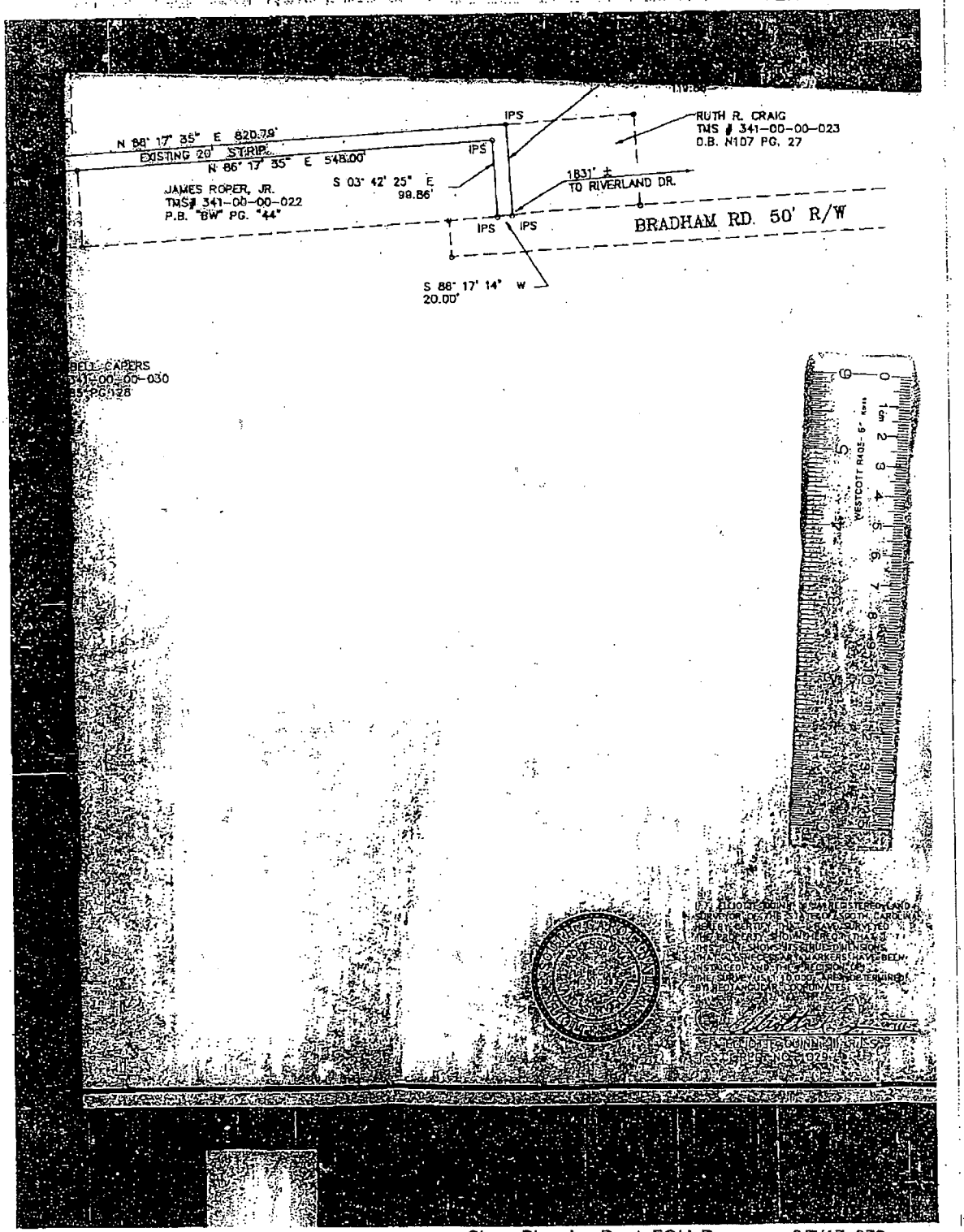




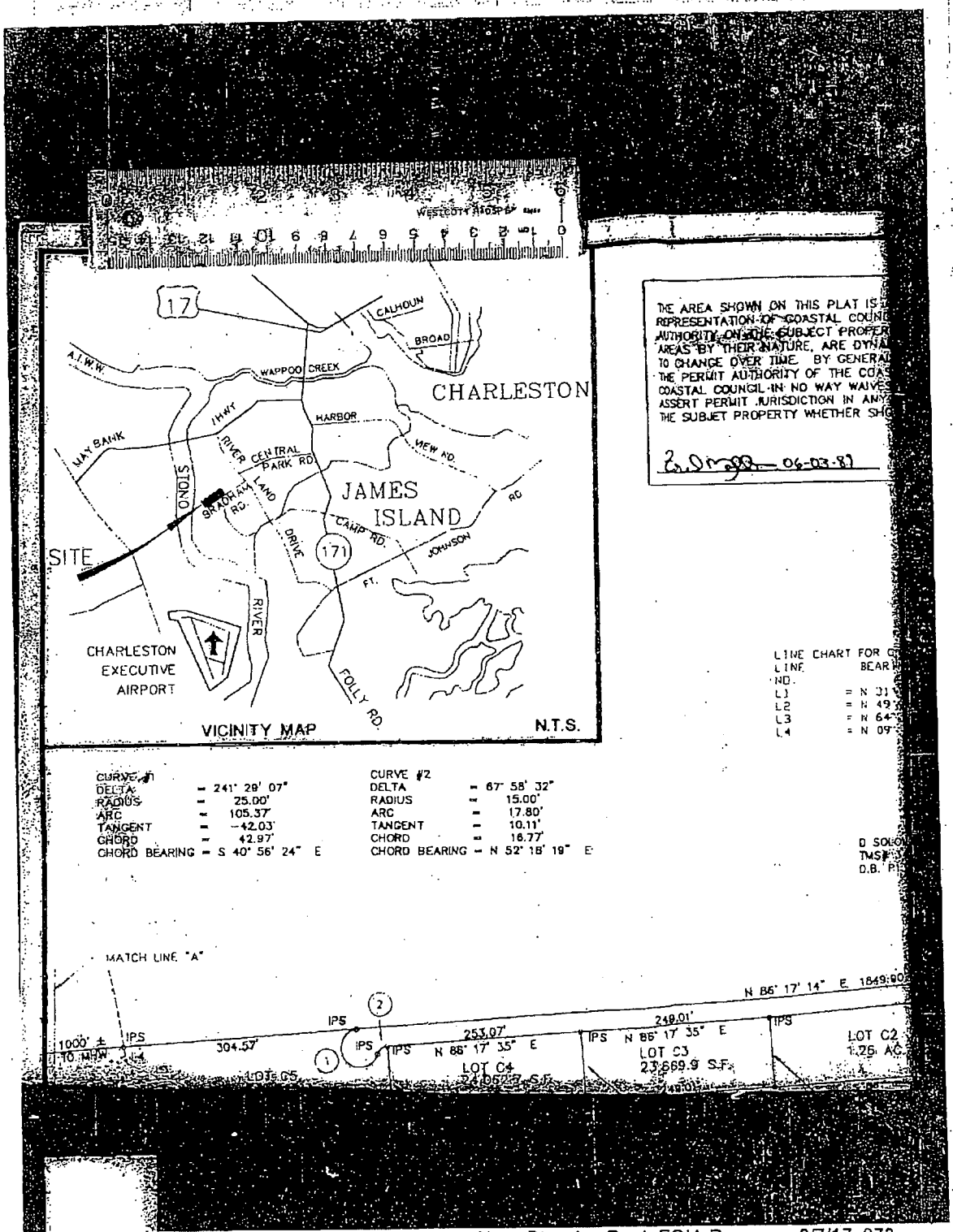
Chas. Planning Dept. FOIA Response 3/7/17 070



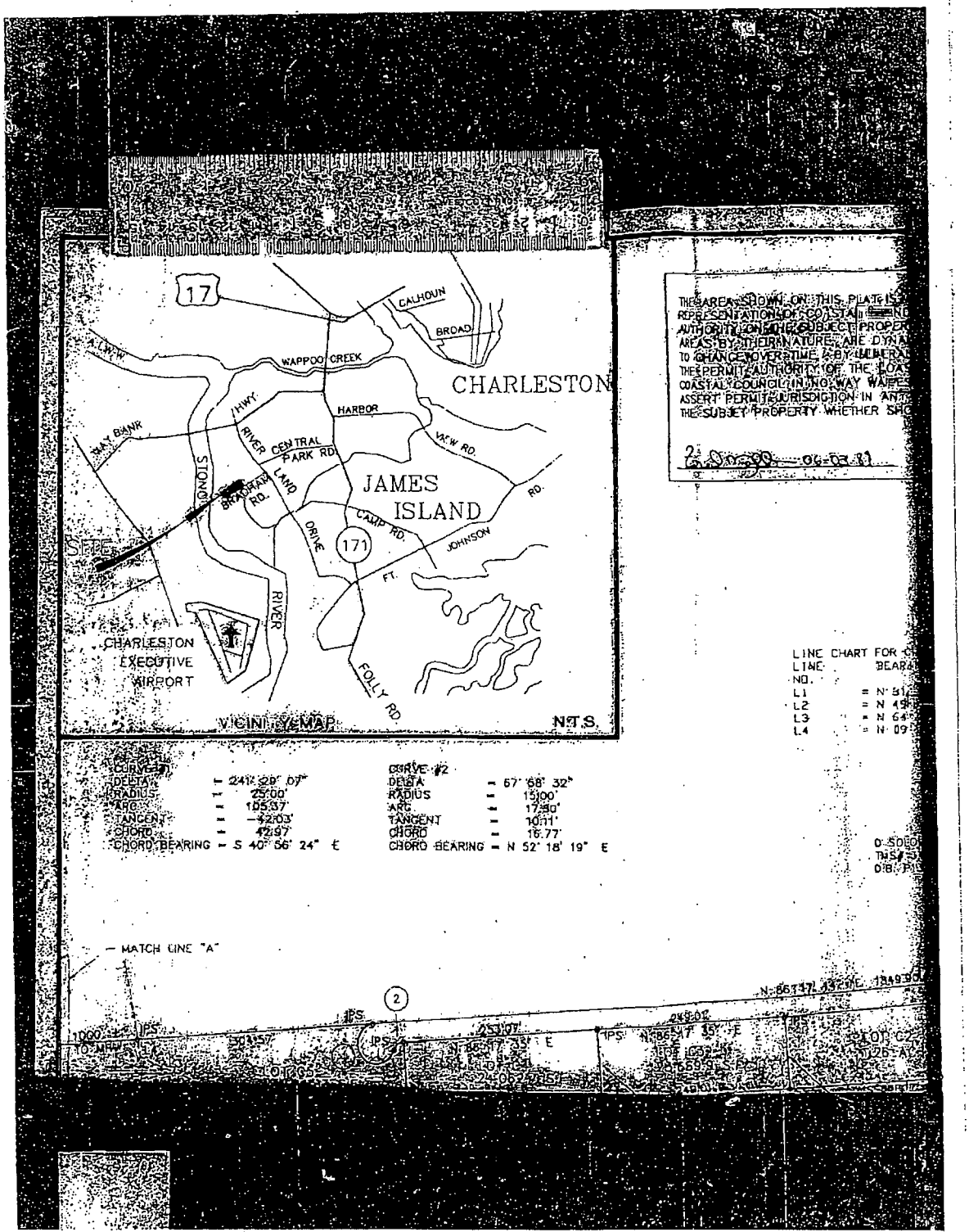
Chas. Planning Dept. FOIA Response 3/7/17 071



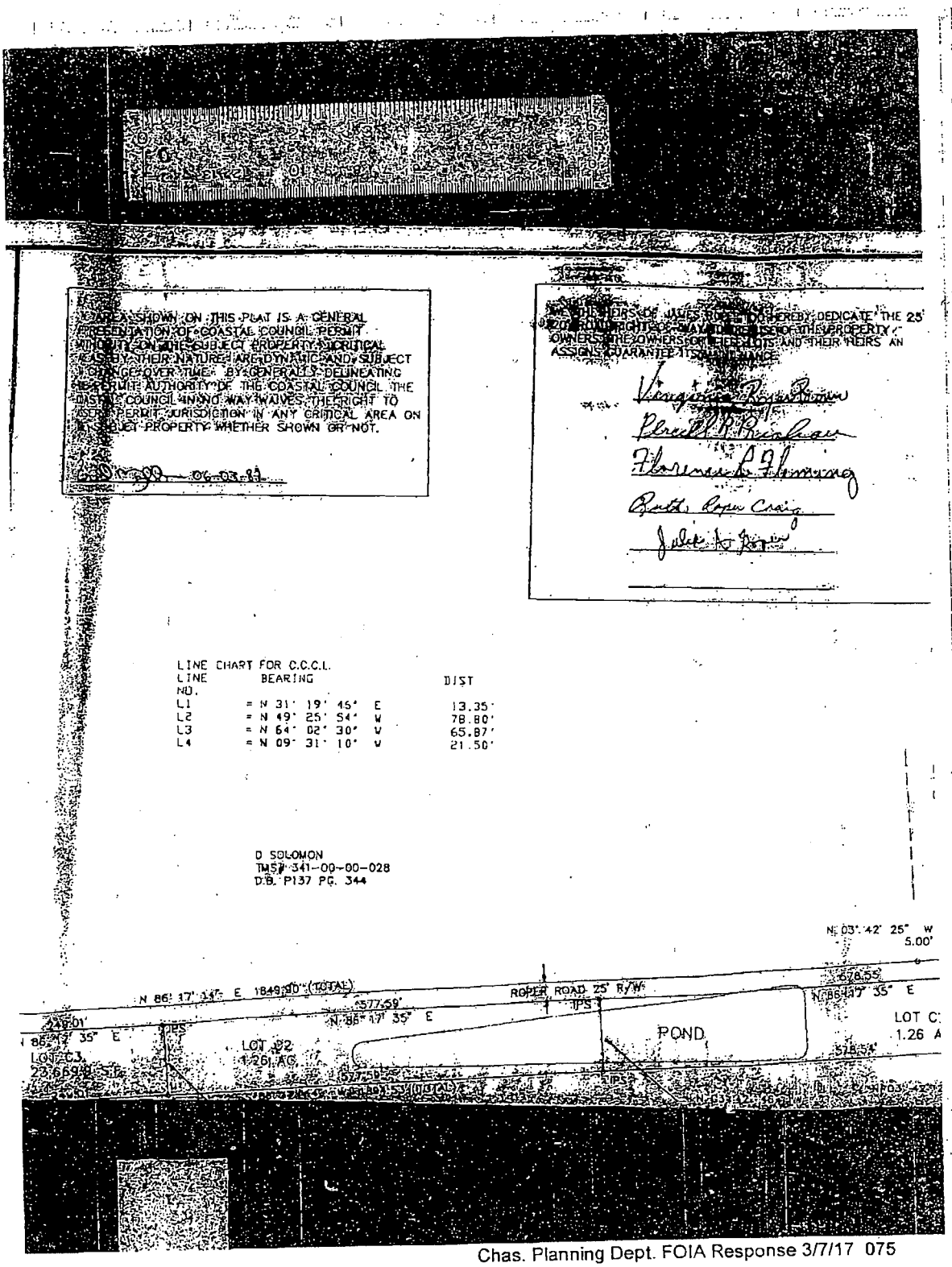
Chas. Planning Dept. FOIA Response 3/7/17 072



Chas. Planning Dept. FOIA Response 3/7/17 073



Chas. Planning Dept. FOIA Response 3/7/17 074



AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF COASTAL COUNCIL PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERALLY DELINEATING PERMIT AUTHORITY OF THE COASTAL COUNCIL THE COASTAL COUNCIL IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY WHETHER SHOWN OR NOT.

06-03-99

THE OWNERS OF LOTS 1 & 2 DO HEREBY DEDICATE THE 25' R/W RIGHT-OF-WAY TO THE USE OF THE PROPERTY OWNERS, THE OWNERS OF LOTS 1 & 2 AND THEIR HEIRS AN ASSIGNS GUARANTEE TITLE TO SAME.

Virginia Rose Brown
Pleasant P. Brisbane
Florence L. Fleming
Ruth Rose Craig
Julie H. Rose

LINE CHART FOR C.C.C.L.

LINE NO.	BEARING	DIST
L1	= N 31° 19' 46" E	13.35'
L2	= N 49° 25' 54" W	78.80'
L3	= N 64° 02' 30" W	65.87'
L4	= N 09° 31' 10" W	21.50'

D SOLOMON
TMS# 341-00-00-028
D.B. P137 PG. 344

N 03° 42' 25" W
5.00'

N 86° 17' 35" E 1849.30' (TOTAL)

ROPER ROAD 25' R/W

N 86° 17' 35" E 577.59'

N 86° 17' 35" E 578.55'

LOT C
1.26 A

248.01'

N 86° 17' 35" E

LOT C3
23,669 SF

LOT #2
1.261 AC.

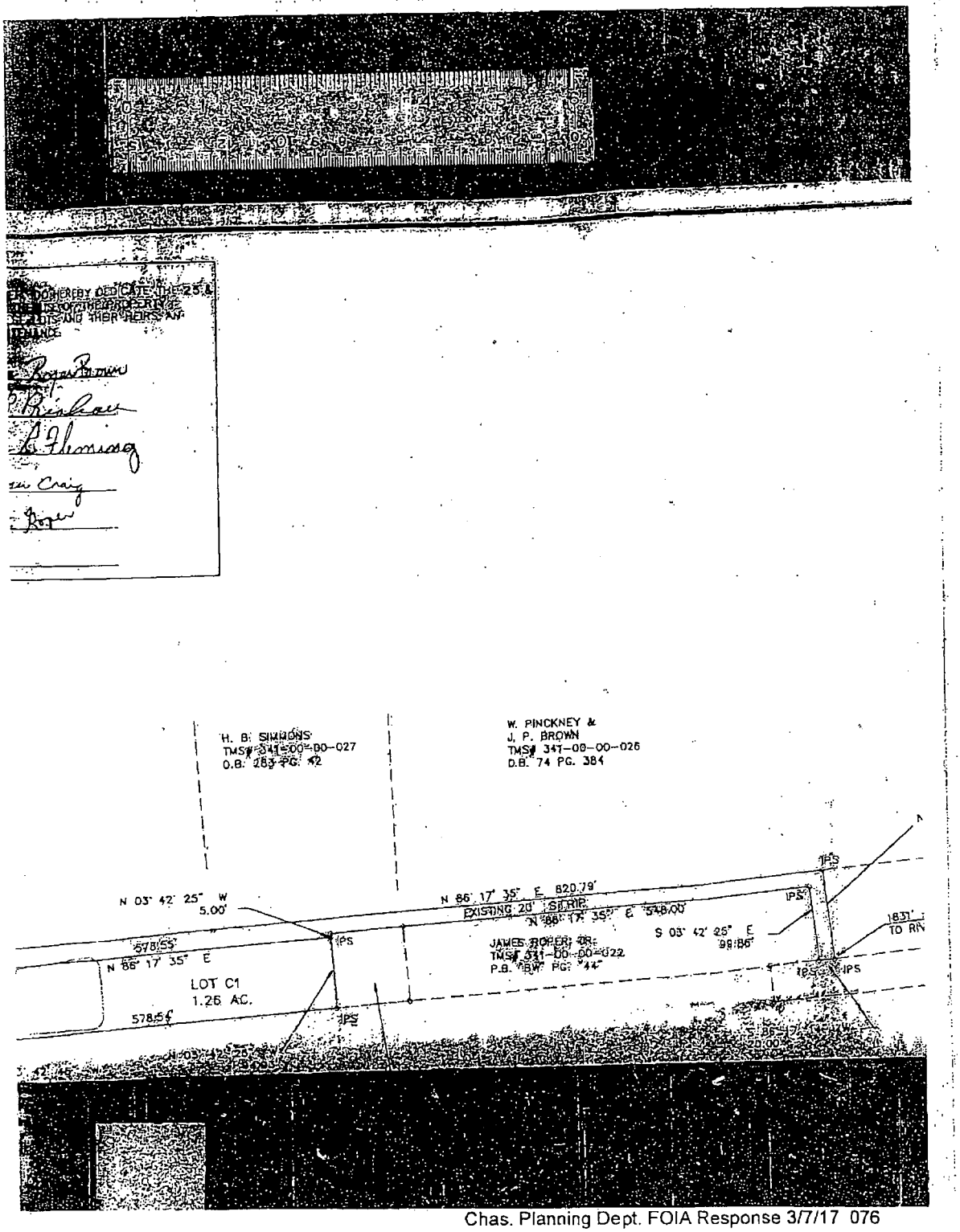
POND

518.54'

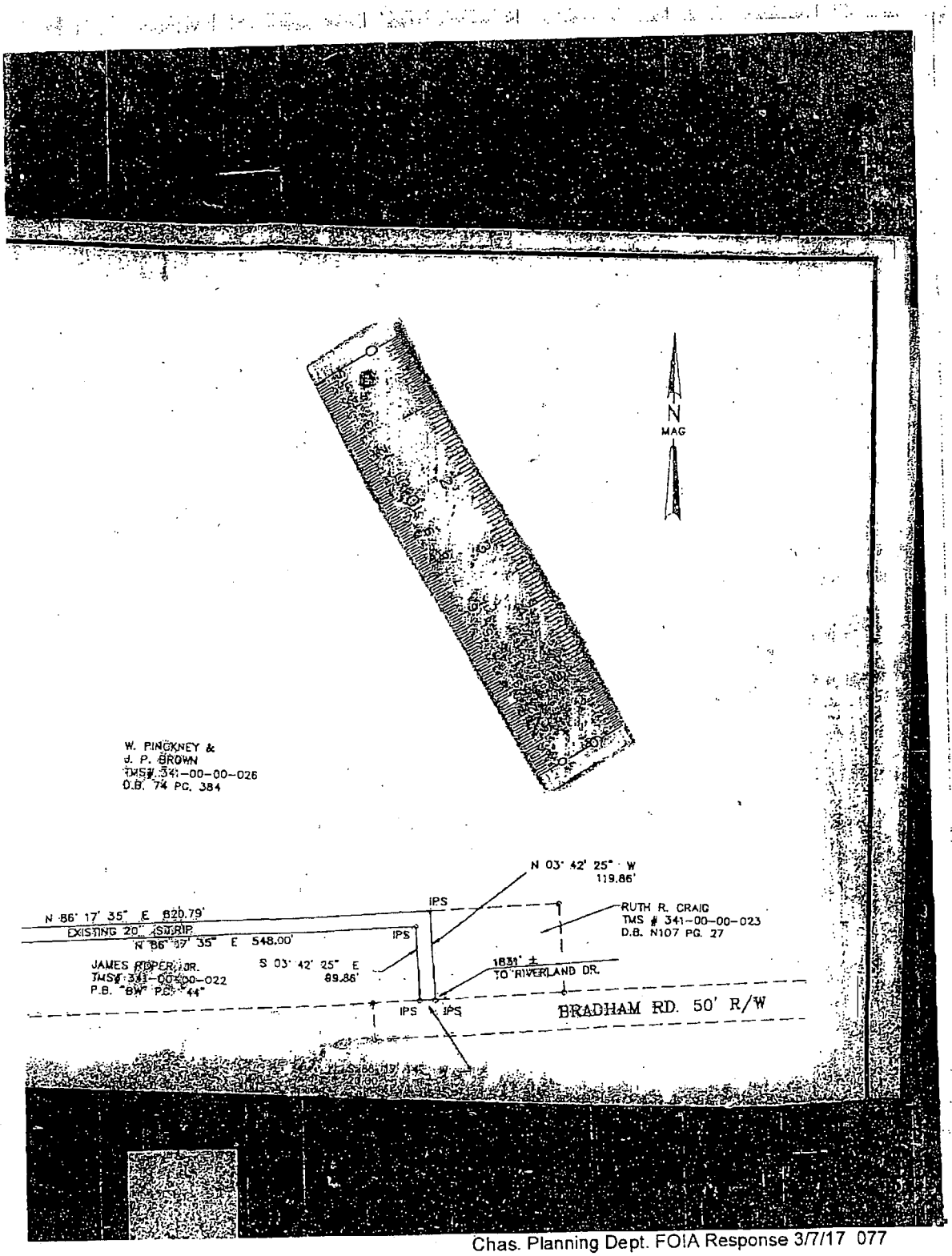
527.50'

IPS

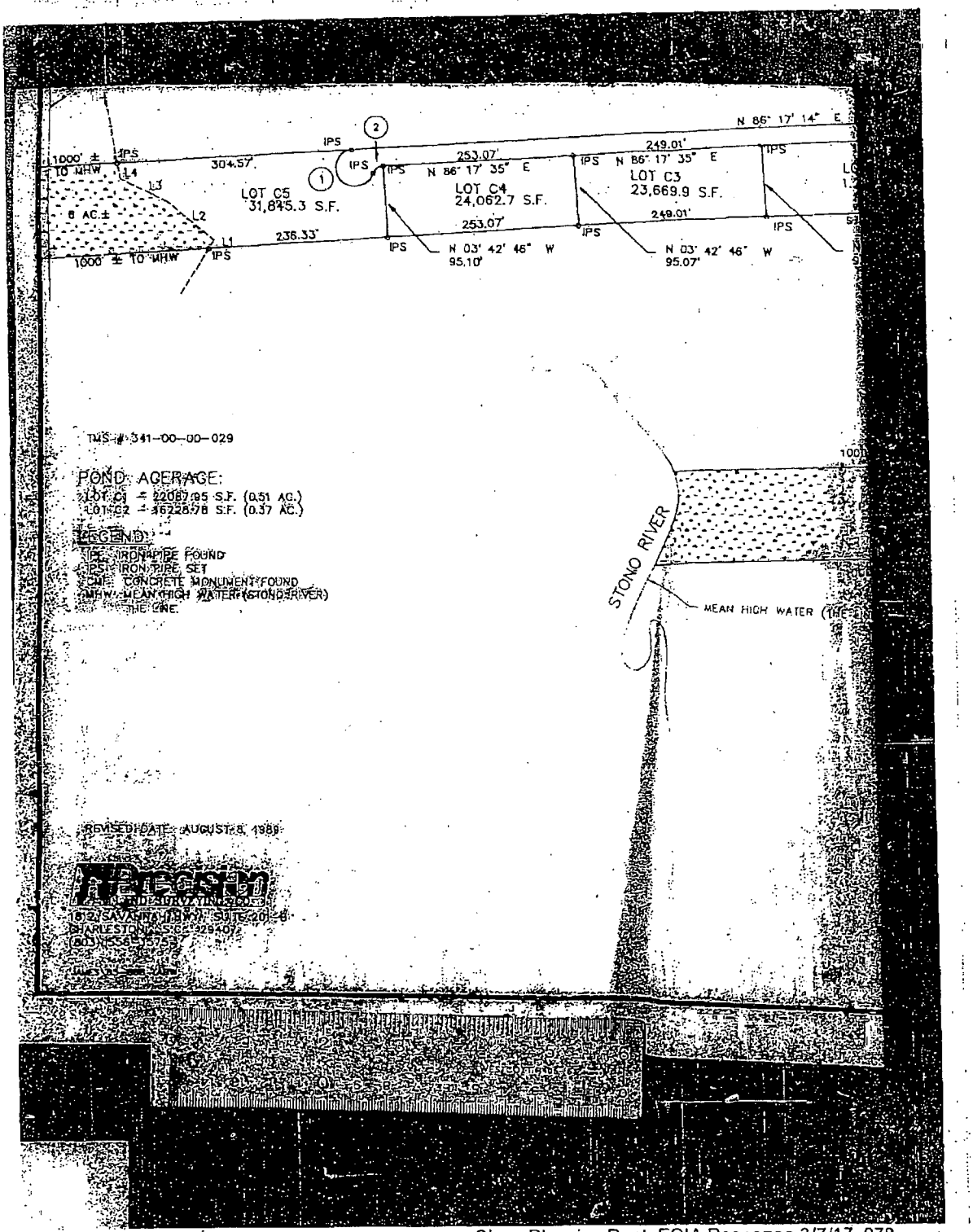
Chas. Planning Dept. FOIA Response 3/7/17 075



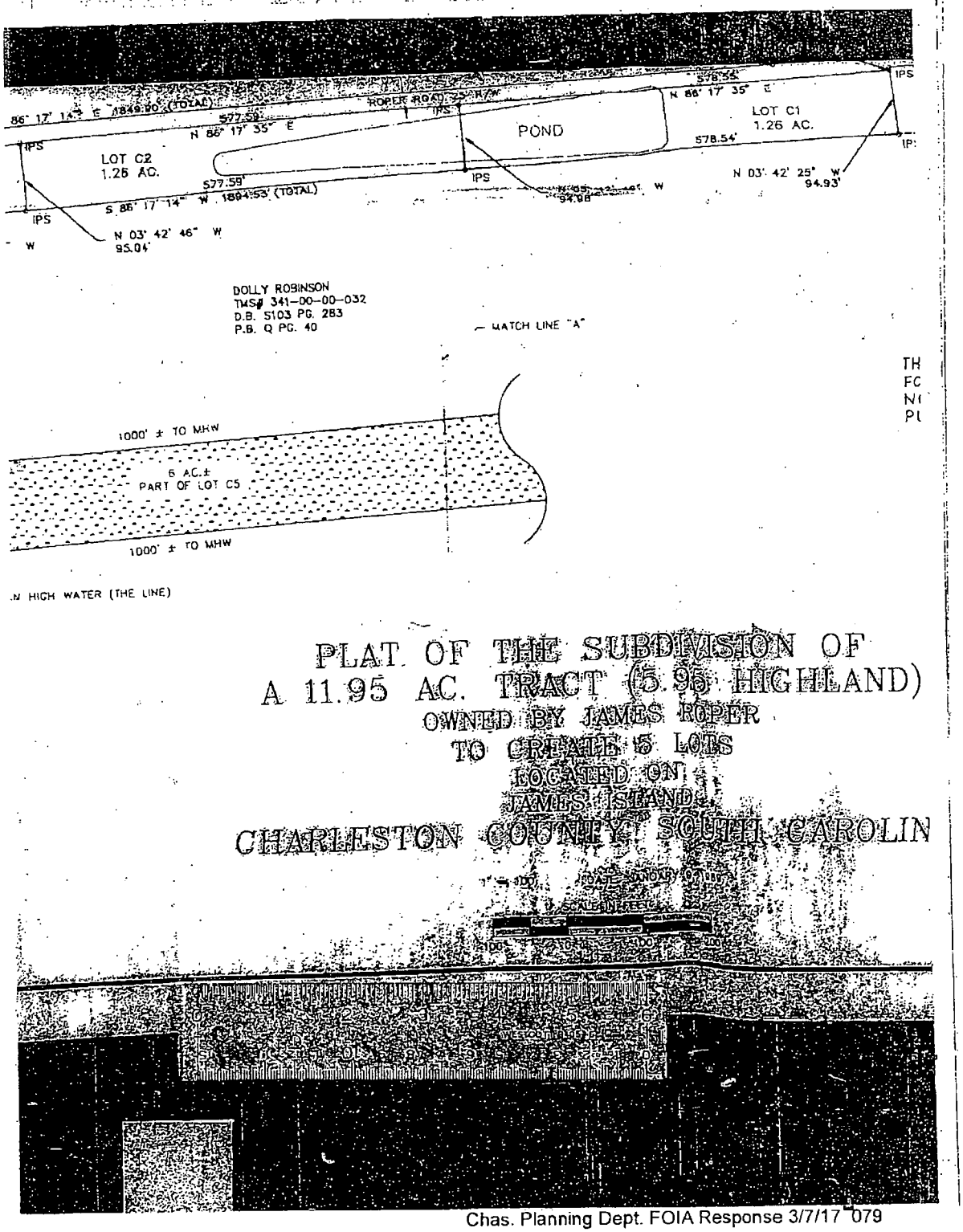
Chas. Planning Dept. FOIA Response 3/7/17 076



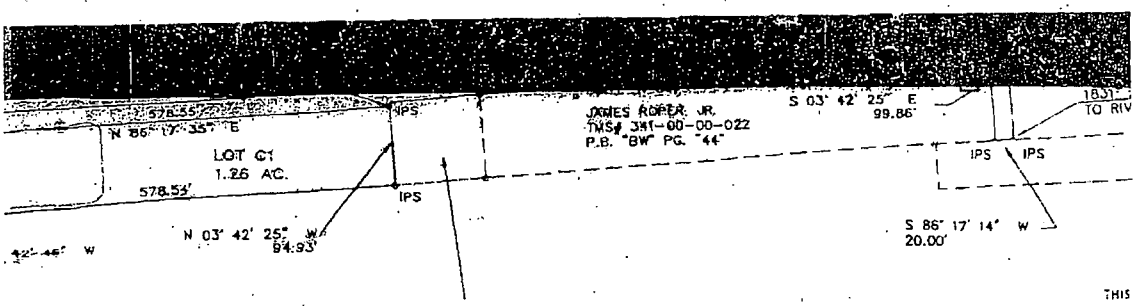
Chas. Planning Dept. FOIA Response 3/7/17 077



Chas. Planning Dept. FOIA Response 3/7/17 078



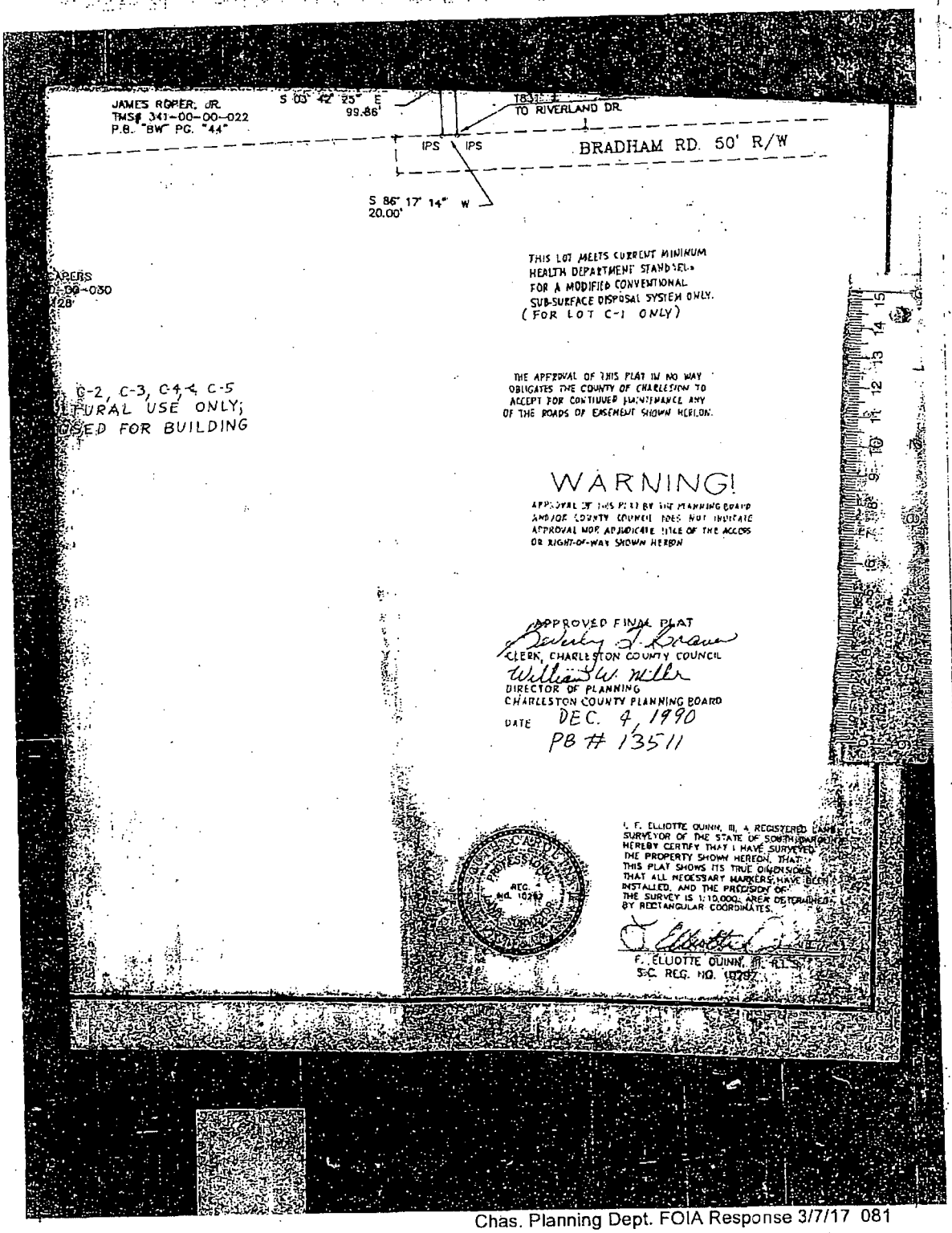
Chas. Planning Dept. FOIA Response 3/7/17 079



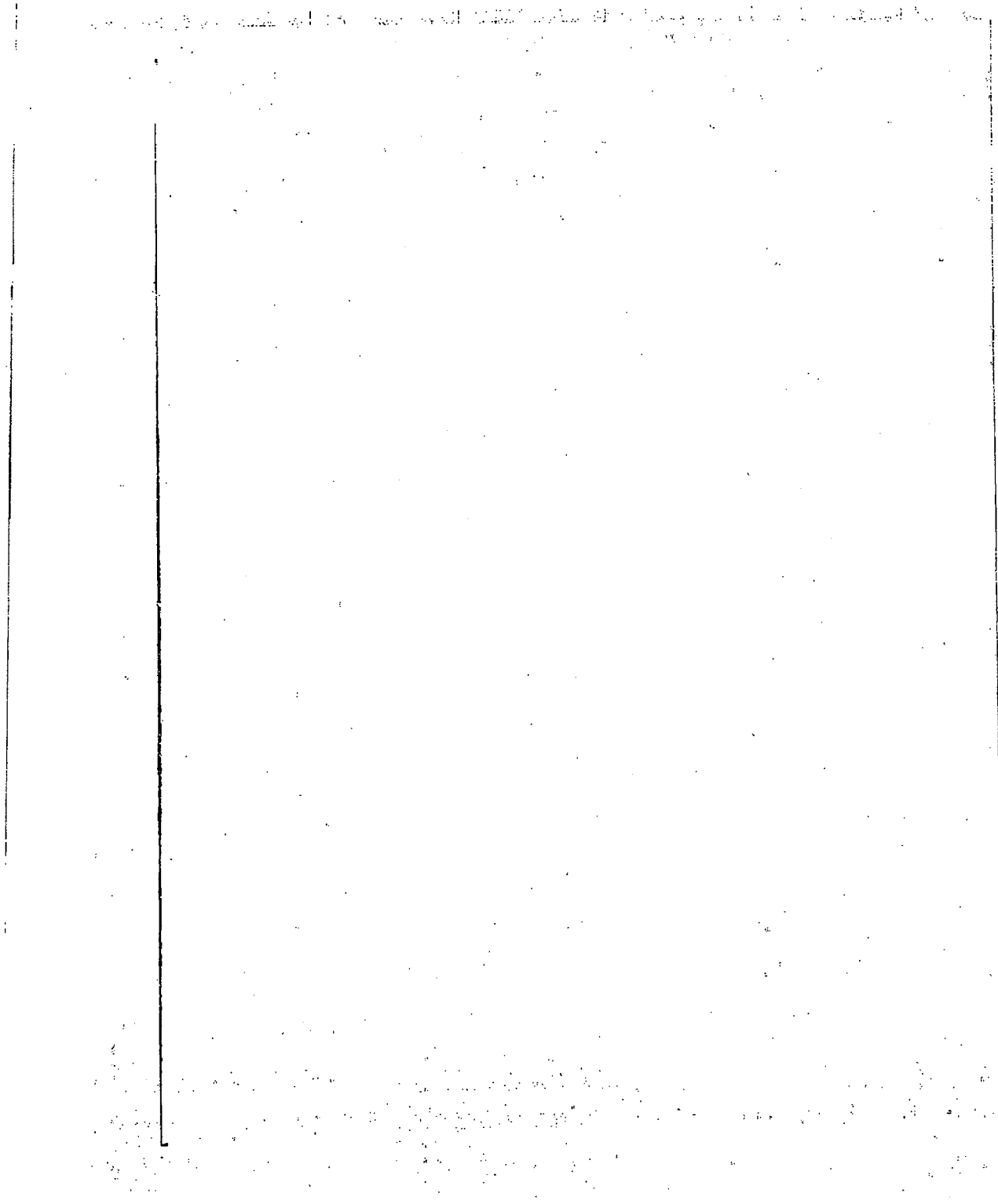
THESE LOTS C-2, C-3, C-4, & C-5
FOR AGRICULTURAL USE ONLY;
NOT TO BE USED FOR BUILDING
PURPOSES.

UBDIVISION OF
(5.95 HIGHLAND)
MES ROPER
E 5 LOTS
D ON
ISLAND
Y, SOUTH CAROLINA

Chas. Planning Dept. FOIA Response 3/7/17 080



Chas. Planning Dept. FOIA Response 3/7/17 081



A SHOWN ON THIS PLAT IS A GENERAL
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COUNCIL IN NO WAY WAIVES THE RIGHT TO
PERMIT JURISDICTION IN ANY CRITICAL AREA ON
JET PROPERTY, WHETHER SHOWN OR NOT.

OWNERS OF LAND SHOWN HEREON HEREBY DEDICATE THE 25' R/W
RIGHT-OF-WAY FOR THE USE OF THE PROPERTY
OWNERS, THE OWNERS OF THESE LOTS AND THEIR HEIRS AN
ASSIGNS GUARANTEES US AND WITNESS

Virginia Roper Brown
Florence L. Fleming
Ruth Roper Craig
Julia A. Roper

WESTCOTT HAGS- 6" cast

LINE NO.		DIST
L1	6" E	13.35'
L2	54" W	78.80'
L3	30" W	65.87'
L4	0" W	21.50'

00-028
344

H. B. SIMMONS
TMS# 341-00-00-0
D.B. 283 PG. 42

N 03° 42' 25" W
5.00'

S 86° 17' 14" E 1849.90' (TOTAL)

577.59'

N 86° 17' 35" E

ROPER ROAD 25' R/W

578.55'

N 86° 17' 35" E

IPS

LOT C2
1.26 AC.

POND

LOT C1
1.26 AC.

578.54'

577.59'

S 86° 17' 14" W 1894.53' (TOTAL)

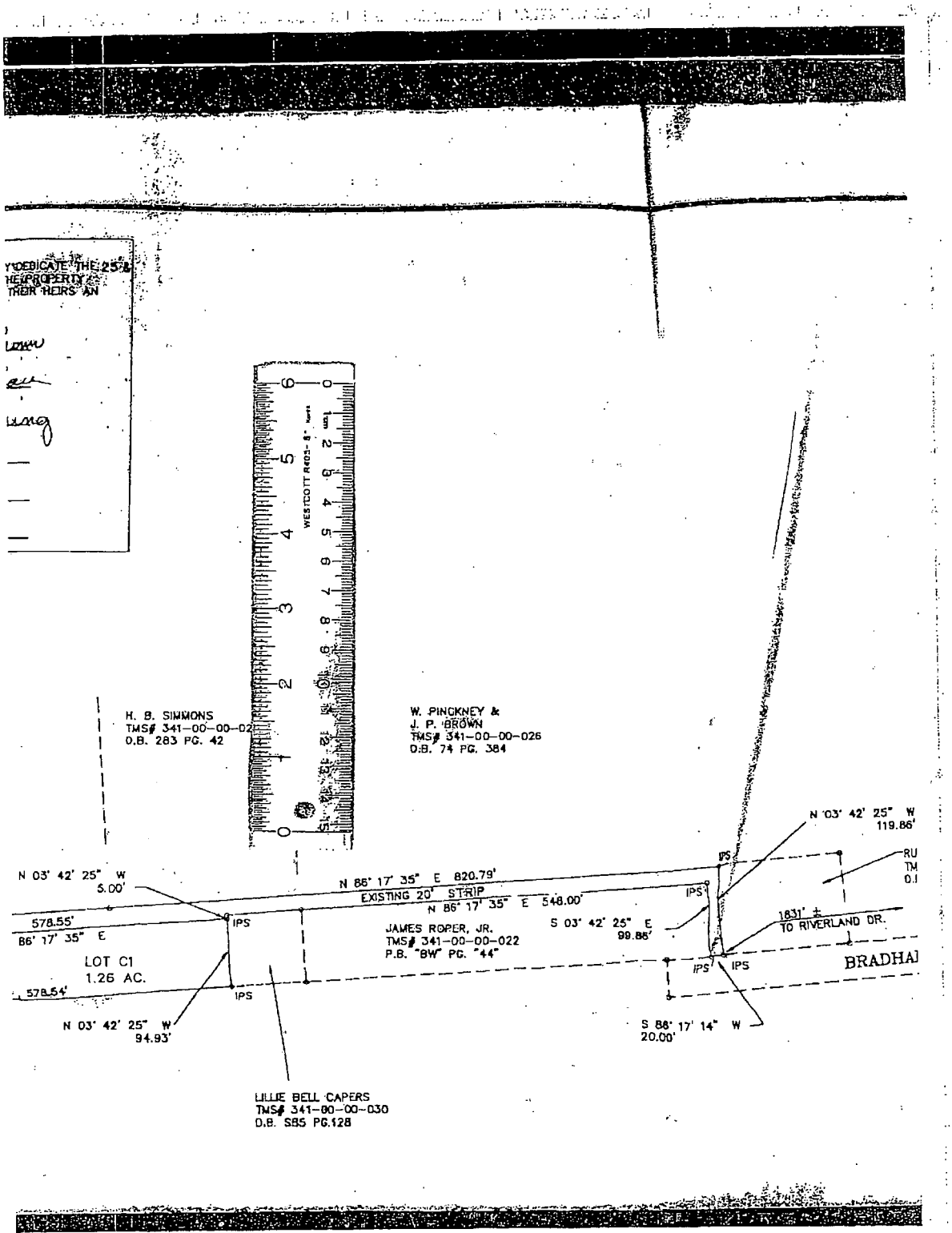
N 03° 42' 46" W
95.04'

N 03° 42' 46" W
94.98'

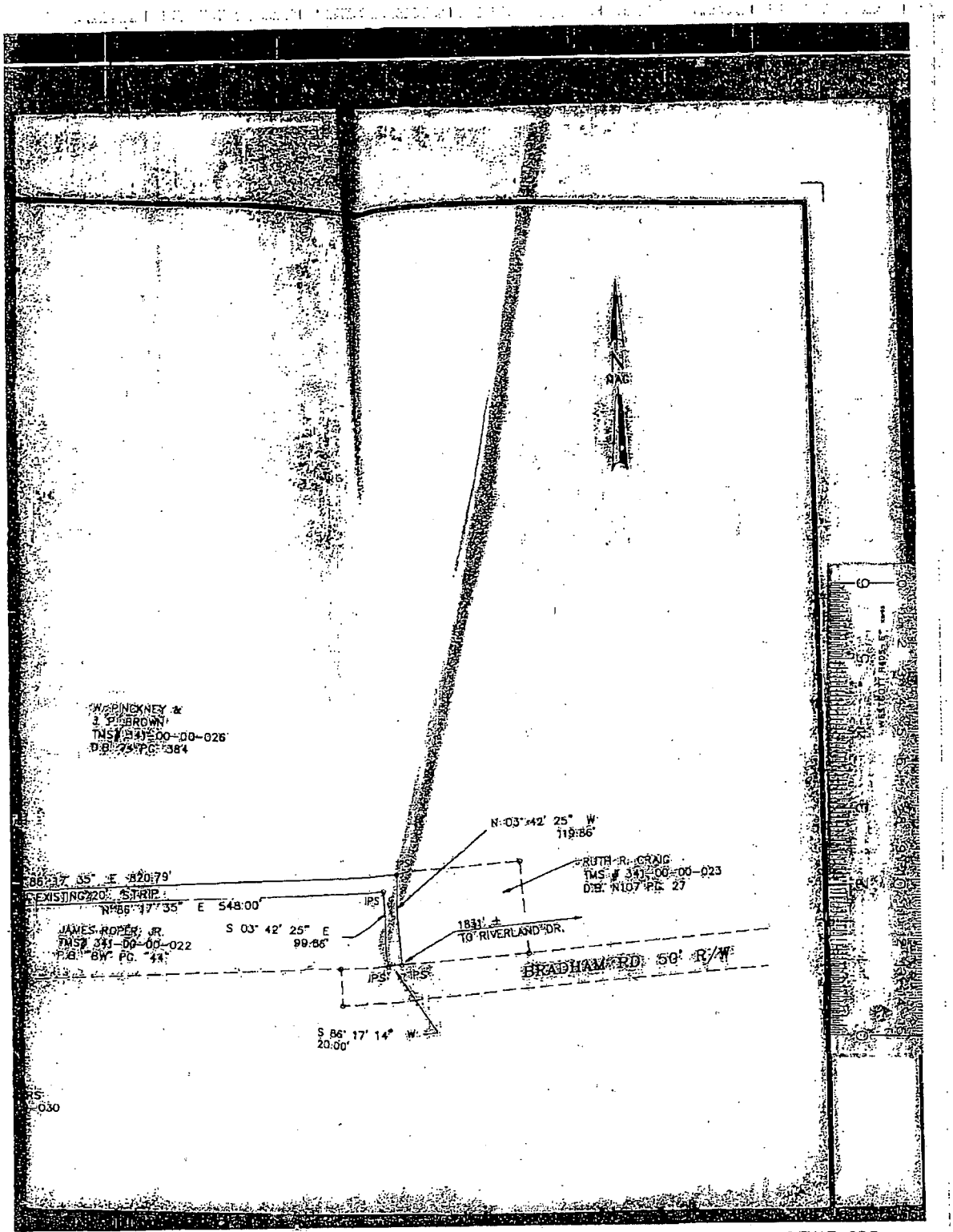
N 03° 42' 25" W
94.93'

DOLLY ROBINSON
TMS# 341-00-00-032
D.B. S103 PG. 283
P.B. Q PG. 40

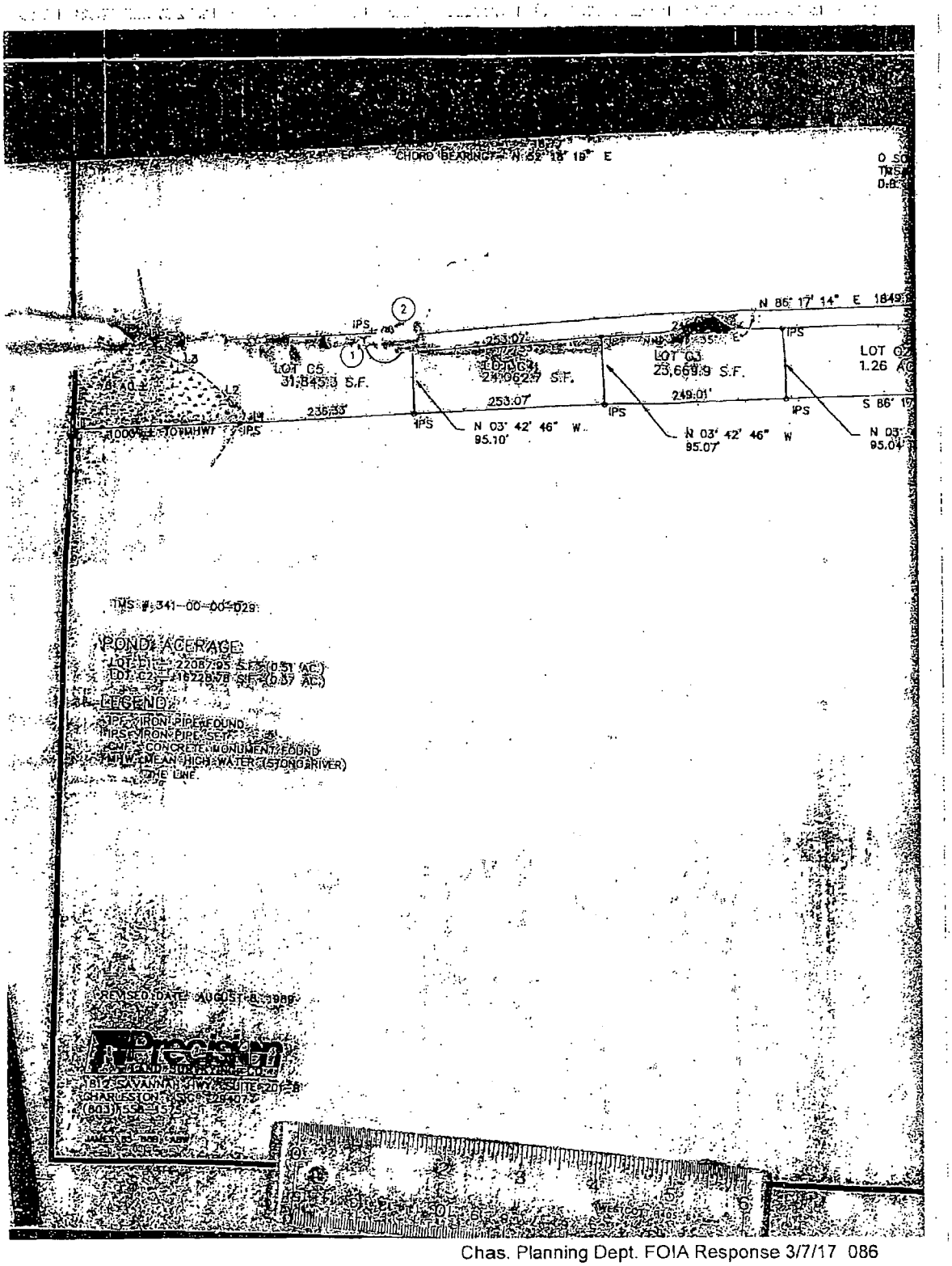
Chas. Planning Dept. FOIA Response 3/7/17 083



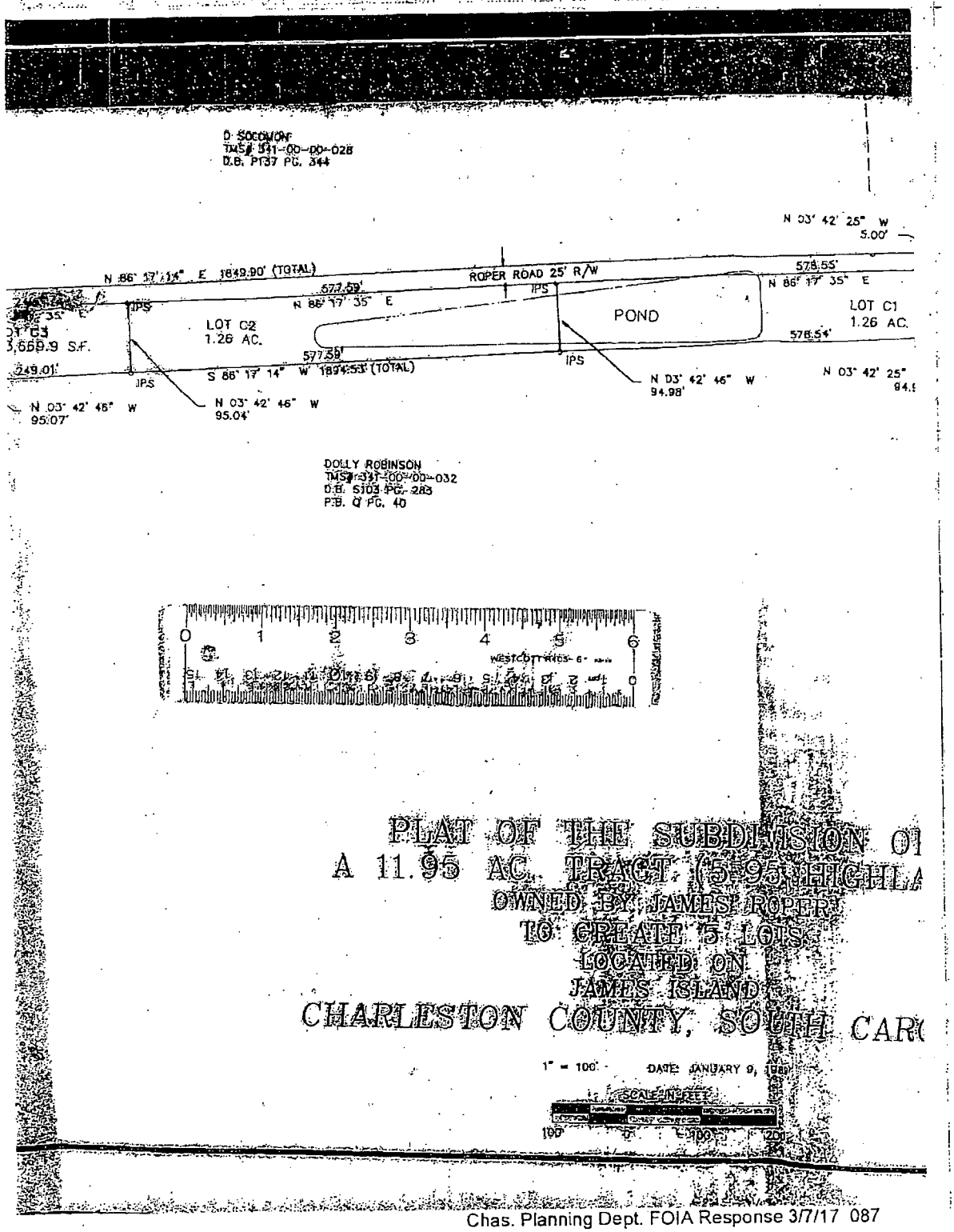
Chas. Planning Dept. FOIA Response 3/7/17 084



Chas. Planning Dept. FOIA Response 3/7/17 085



Chas. Planning Dept. FOIA Response 3/7/17 086

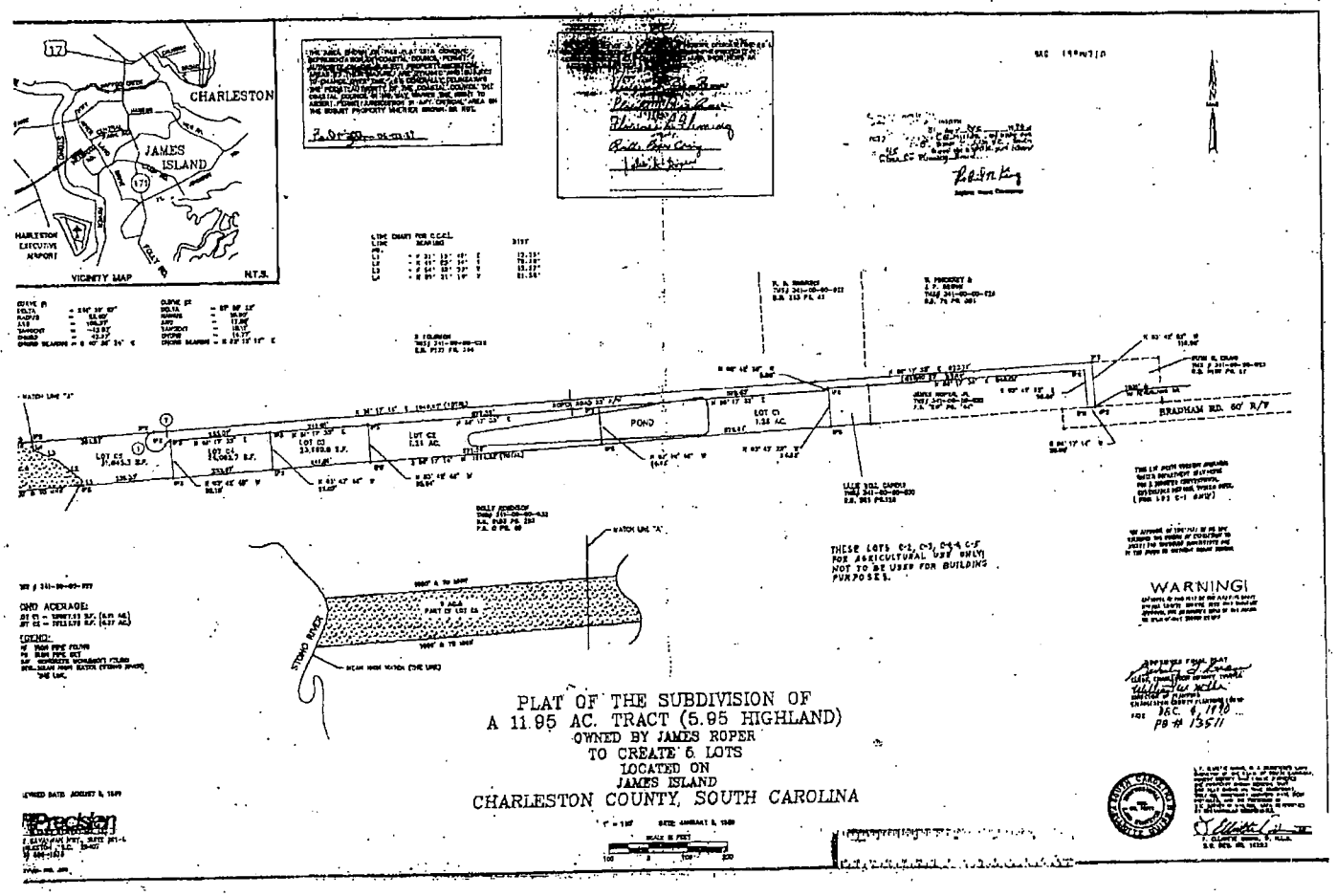


Chas. Planning Dept. FOIA Response 3/7/17 087

Chas. Planning Dept. FOIA Response 3/7/17 088

PLAT OF THE SUBDIVISION OF
A 11 95 AC. TRACT (5.95 HIGHLAND)
OWNED BY JAMES ROPER
TO CREATE 5 LOTS
LOCATED ON
JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA

DEC. 9, 1110
PB # 13511



Chas. Planning Dept. FOIA Response 3/7/17 089

AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE)

© Carolina One Real Estate

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into as of the Effective Date between:

Buyer(s), Carpenter Braselton, LLC. ("Buyer"), and

Seller(s), Herbert Brown ("Seller").

[X] BUYER [ ] SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period starting at 10 AM (M/Tu/W/Th/Fr) and counted from 10 AM of the first Business Day following the Effective Date. Business Days shall not begin or end on a Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods**

2. **PURCHASE PRICE:** $ 170,000.00 (USD)

Payable by [ ] a combination of financing and cash or [X] cash. Payment shall be good funds.

The sale of Buyer's real property [X] is [ ] is not required for Purchase and this contingency terms [X] are [ ] are not attached.

3. **PROPERTY:** Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in working order, including any landscaping, grounds and ~~any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear.~~ Buyer is solely responsible for inquiring about lease issues prior to signing Contract. Leasing issues: (see Adjustments). Leased items on Property can include fuel tanks, alarm systems, satellite equipment, roll carts etc. and contain fuel, etc.

Address 0 Riverland Unit # _____

City Charleston State of South Carolina

Zip 29412 County of Charleston

Lot C5 Block _____ Section/Phase _____ Subdivision Blacks

Other AND TMS# 341-00-00-106 TMS 341-00-00-029

Parties agree that no personal property will transfer as part of this sale, except described below and/or [X] in attachment(s):
Conveying are BOTH parcels 341-00-00-029 and 341-00-00-106.
See Attachment.

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before November 10th, 2014 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in ownership type and name(s): Carpenter Braselton, LLC or as stipulated by Buyer. The deed shall be delivered to the Closing Attorney's

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

Carolina One Real Estate - West Islands, 1265 Folly Road Charleston, SC 29412
Phone: 843.478.9366 Fax: 843.746.4556 Don Mongedoht Herbie.Brown

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DEFENDANT'S EXHIBIT 10

designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (ex. manuals, equipment warranties, service info, etc.) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: $10,000.00 (USD) Earnest Money is paid as follows: $10,000.00 accompanies this offer and $ zero will be paid within 0 Business Days after Effective Date and Earnest Money is in the form of ☐ check ☐ cash ☒ other (wire, etc.) Wire to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Carolina One Real Estate as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT: UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS OTHERWISE AGREED UPON IN THIS CONTRACT OR FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SC TREASURER. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER OR MEDIATION IS TO BE UTILIZED, PARTIES AGREE THAT $150.00 OF EARNEST MONEY SHALL BE RELEASED AND/OR PAID TO THE ESCROW AGENT PRIOR TO FILING INTERPLEADER OR MEDIATION AS COMPENSATION. ESCROW AGENT ACKNOWLEDGES DUTIES.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs unless otherwise agreed:
none

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association, etc.) are the ☐ Seller's or ☒ Buyer's transaction costs.

☐ At Closing, Seller will pay Buyer's transaction costs not to exceed $ none OR none % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.
BUYER (__) (__) DATE none , ____ TIME none
SELLER (__) (__) DATE none , ____ TIME none

7. ~~FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 15 year or ☐ 30 year or ☐ other purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum % and maximum % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize their Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). If a Lender declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. Buyer shall apply for financing within Business Days from the Effective Date and shall provide the Seller with reasonable written loan pre approval documentation within Business Days from the Effective Date. If the Seller and Brokers are notified of inability to obtain financing during the~~

Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.
Proposed Lender: _____ ☐ FHA ☐ VA ☐ Conventional ☐ Seller
☐ Other _____
An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. **INSPECTION/REINSPECTION RIGHTS:** Buyer and qualified/certified inspectors ("Inspectors") can reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☐ **Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (electricians, plumbers, etc.) to safely connect and operate the utilities during the Inspections**

☐ **Other** _____ ☐ **see attached.**

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. **APPRAISED VALUE:**

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. Otherwise, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. **SURVEY, TITLE EXAMINATION, INSURANCE:** Brokers recommend Buyer have Property surveyed, title examined, and appropriate insurance (including owner's title) effective at Closing. Seller to cancel existing insurance and Buyer to obtain new insurance policies by Closing unless otherwise agreed upon in writing by Parties. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing and requirements of insurance for the property prior to signing Contract.

11. **SURVIVAL:** If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. **DUE DILIGENCE:**

The DUE DILIGENCE PERIOD ends no later than 10 **Business Days after the original Effective Date unless the Parties agree in writing to extend the DUE DILIGENCE PERIOD.**

During the Due Diligence Period, Seller agrees Buyer may choose any of the following:

(1) Conduct/obtain Inspections
(2) Deliver Repairs Request(s) Notice to Seller
(3) Proceed under amended Contract
(4) Proceed under As Is Contract
(5) Terminate Contract by Delivering "Notice of Termination" and "Termination Fee" to Seller

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of $ zero USD Good Funds. Termination Fee paid to Seller by payment or, by release to Seller an appropriate amount of Earnest Money or, by a combination of payment to Seller and an appropriate amount of Earnest Money (Escrow Agent shall timely disburse upon Buyer timely signing any required Earnest Money disbursement agreement for payment of the Termination Fee). If Seller receives the Delivered Notice of Termination and the full Delivered Termination Fee during the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination and all of the Termination Fee to Seller prior to the end of the Due Diligence Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

SHOULD BUYER FAIL TO REACH A NEW/AMENDED CONTRACT OR TERMINATE THE CONTRACT: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Buyer will have the right for 6 Business Days after Notice of damage to Deliver Notice of Termination to the Seller. If Buyer proceeds according to the Contract, Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☐ is ☒ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed $ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy by delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing. Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13).

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers.

20. MEGAN'S LAW: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, clandestine laboratory, and crime information from appropriate law enforcement officials or information sources.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this Contract. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the SC Code 12-8-580 (as amended) regarding state income tax withholding requirements if the Seller is not a resident or has not filed SC state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by buyer and paid for by buyer.

All of these reports or certifications shall be completed no later than _____ Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available. This section survives Closing. Buyer is solely responsible for minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel.

27. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
  (i) Deliver Notice of Default to Seller and terminate Contract and
  (ii) Pursue any remedies available to Buyer at law or equity and
  (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
  (i) Deliver Notice of Default to Buyer and terminate Contract and
  (ii) Pursue any remedies available to Seller at law or equity and
  (iii) Recover attorneys' fees and all other direct costs of litigation if Seller prevails in any action against Buyer.

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.

(D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period; either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION CLAUSE: Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (Info@SCREALTORS.org 1-800-233-6381). Disputes include representations made by any Party, Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing Date. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations; inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to

easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS' COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a SC law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

32. *BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.*

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. (Land issues may include: restrictions and easements that may affect desired use, drainage issues, hazardous wastes, environmental issues, water rights, availability of water, sewer or septic waste water issues, soil tests, wetlands surveys and studies, subordination, lot releases, and other issues.) If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here:
Title to both parcels must be insurable.

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the Agency Disclosure, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____, _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties.
If signee is not a Party, appropriate legal documents (Power of Attorney, Corporate Authorization, etc.) are ☐ attached or ☐ to be Delivered within _____ Business Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: Joaquin A. Lowy - Manager Carpentar Braselton, LLC. Date: 10-27-2014 Time: 3:25 pm

WITNESS: Daniel McKee Date: 10-27-2014 Time: 3:25pm

BUYER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

SELLER: Herbert Brown Date: 10-29-14 Time: 1:47 pm

WITNESS: Date: 10-29-14 Time: 1:47 pm

SELLER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

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[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME: Carolina One Real Estate

ESCROW AGENT'S LAW FIRM/COMPANY/BROKERAGE: Carolina One Real Estate

ESCROW AGENT CONTACT INFO: 1265 Folly Rd Charleston SC 29412 (843)795-7810 dmengedoht@carolinaone.com

INVOLVED AS: ☒ BUYER AGENT ☐ SELLER SUBAGENT ☒ DUAL AGENT ☐ BUYER DESIGNATED AGENT*

LICENSEE: Dan Mengedoht SC LICENSE# 50995 EXPIRES 06/30/2016

BROKER IN CHARGE: John Grisillo SC LICENSE # 72387 EXPIRES 06/30/2015

BROKERAGE COMPANY NAME: Carolina One Real Estate

MEMBERS OF: CTAR ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 1265 Folly Road, Charleston SC 29412

NOTICE EMAIL/FAX: dmengedoht@carolinaone.com

MOBILE PHONE: (843)478-9366 OFFICE PHONE: (843)795-7810 OTHER: _____

INVOLVED AS: ☒ SELLER AGENT ☐ SELLER SUBAGENT ☒ DUAL AGENT ☐ SELLER DESIGNATED AGENT*

LICENSEE: Dan Mengedoht SC LICENSE# 50995 EXPIRES 06/30/2016

BROKER IN CHARGE: John Grisillo SC LICENSE # 72387 EXPIRES 06/30/2015

BROKERAGE COMPANY NAME: Carolina One Real Estate

MEMBERS OF: CTAR ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 1265 Folly Road, Charleston SC 29412

NOTICE EMAIL/FAX: dmengedoht@carolinaone.com

MOBILE PHONE: (843)478-9366 OFFICE PHONE: (843)795-7810 OTHER: _____

*DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND OTHER ASSOCIATED LICENSEES ARE DUAL AGENTS.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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Plaintiff 0015

ADDENDUM/AMENDMENT TO

© Carolina One Real Estate

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☒ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 0 Riverland Unit # _____

City Charleston State of South Carolina

Other And TMS# 341-00-00-106 TMS 341-00-00-029

The undersigned Parties hereby agree as follows: Conveying with lot 341-00-00-029 are the high ground acreage of approximately .73 acres and the approximately 6 acres of marsh shown on plat CB-130, and described in Deed at Book T631 Page 283. And all rights and use of the TMS# 341-00-00-106 known as Roper Road.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Jacqueline A. Carey - Manager Carpenter Brasselton, LLC. Date: 10-27-2014 Time: 3:25 pm

WITNESS: Daniel McBee Date: 10-27-2014 Time: 3:25 pm

BUYER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

SELLER: Robert D. Brown Herbert Brown Date: 10-29-14 Time: 1:47 pm

WITNESS: Merrill Fraser Date: 10-29-14 Time: 1:47 pm

SELLER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

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BUYER [ ] BUYER SELLER [ ] SELLER HAVE READ THIS PAGE

Carolina One Real Estate - West Islands, 1265 Folly Road Charleston, SC 29412 Phone: 843.478.9366 Fax: 843.766.4556 Herbie Brown
Dan Mengedoht Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Plaintiff 0016

Certificate of Occupancy

Charleston County, SC
Office of the Building Official
Building Inspection Services Department

ACCREDITED

The referenced building has been inspected and found in accord with the Charleston County Code Ordinances for "Buildings and Building Regulations" and other applicable Federal, State and County Regulations.

Permit Type	Building (R)	**Permit No.**	BLDR-4-15-58653
Issued to:	KEVIN SHAW	**Contractor**	KEVIN SHAW
Subdv / Project		**Date Issued**	4/25/2016
Parcel No.	3410000028	**Code Edition**	2012 IRC
Flood Zone/Level	AE 14 DFE 15	**Special Conditions**	SINGLE FAMILY RESIDENCE, PORCH, DECK & PARKING UNDERNEATH

2284 LUCKY RD
CHARLESTON, SC 29412
Location

Occupancy Load:

Dave H Simmons
Building Official

Not Transferable

POST IN A CONSPICUOUS PLACE

FOIA Response Chas Cty Lucky Road 073

DEFENDANT'S EXHIBIT
Exhibit 11

CHICAGO TITLE INSURANCE COMPANY

3700 Forest Drive, Suite 201, Columbia, SC 29204

Issued By:

The Carolinas Title Agency, 973 Houston Northcutt Blvd., Suite 101, Mt. Pleasant, SC 29464

SCHEDULE A

Office File Number A-9763-P

Commitment Number A-9763-P

1. Commitment Date: November 10, 2014 at 10:00 AM

2. Policy (or Policies) to be issued:

   a. Owner's Policy Type: Residential — Policy Amount $170,000.00

      Proposed Insured:

      Carpenter Braselton, LLC

   b. Loan Policy Type: Residential — Policy Amount $

      Proposed Insured:

3. Fee Simple interest in the Land described in this Commitment is owned, at the Commitment Date, by Herbert Brown.

4. The land referred to in the Commitment is described as follows: SEE EXHIBIT A

Note: This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

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AMERICAN LAND TITLE ASSOCIATION

EXHIBIT B

Plaintiff 0002

CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B - Section 1

Office File Number A-9763-P

Commitment Number A-9763-P

Requirements

The following requirements must be met:

1. Pay the agreed amounts for the interest in the Land and/or the mortgage to be insured.

2. Pay us the premiums, fees and charges for the Policy.

3. Documents satisfactory to us creating the interest in the Land and/or the mortgage to be insured must be signed, delivered and recorded.

4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.

5. Seller/Mortgagor Affidavit (Form 3049) must be executed and returned to the Company.

6. Disclosures required by the South Carolina Department of Insurance are to be made in writing on CTIC Form 2781 (Rev. 4/90) and copy thereof returned to the Company.

7. Exception 2 may be deleted, altered or amended when the Company receives its Form Number 3049 completely executed.

8. Exceptions 3 and 4 may be deleted, altered or amended when the Company receives a satisfactory survey and/or inspection of the Land

9. The mechanics' lien, exception 5, may be deleted, altered or amended when the Company receives its Form Number 3049 completely executed.

The following ALTA endorsements will be attached to the final policy upon completion of the Company's requirement for issuance: 8.1 and 9

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AMERICAN LAND TITLE ASSOCIATION

Plaintiff 0003

CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B - Section 2

Office File Number A-9763-P

Commitment Number A-9763-P

Exceptions

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment

2. Rights or claims of parties in possession not shown by the Public Records.

3. Any encroachment, encumbrance, violation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

4. Easements, or claims of easements, not shown by the Public Records.

5. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.

6. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.

7. Subject to any and all applicable easements, restrictions, conditions, rights-of-way, setbacks and other matters which may be disclosed by that certain plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County.

   Note Building Restriction shown on said plat: "These lots C-2, C-3, C-4 and C-5 for Agricultural Use only, not to be used for Building Purposes:

8. This policy does not insure title to that portion of the Land, if any, lying below the mean highwater mark of abutting tidal waters.

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AMERICAN LAND TITLE ASSOCIATION

9. This policy does not insure any portion of the Land which is located within a marsh area.

10. Interests created by, or limitations imposed by, the Federal Coastal Zone Management Act or other federal law or regulation, or by South Carolina Code § 48-39-10 through 48-39-360, as amended, or any regulations promulgated pursuant to said state or federal laws.

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AMERICAN LAND TITLE ASSOCIATION

EXHIBIT A

LEGAL DESCRIPTION

Office File Number A-9763-P

Commitment Number A-9763-P

ALL that certain lot, piece or parcel of land, situate, lying and being at the end of Roper Road, James Island County of Charleston, State of South Carolina, measuring and containing 31,845.3 square feet of highland and six (6) acres of marshland, more or less, and known and designated as **LOT C-5** on a plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

TMS Number: 341-00-00-029

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AMERICAN LAND TITLE ASSOCIATION

Plaintiff 0006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-1560
CARPENTER BRASELTON, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
ASHLEY ROBERTS, JEREMY COOK And SALAHEDDINE EZZAOUDI,	)	
	)	
	)	
Defendants.	)	
	)	

The undersigned hereby certifies that on September 20, 2017, she served a copy of Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment by electronic transmission and/or U.S. Mail, postage pre-paid, addressed as follows:

Demetri K. Koutrakos
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390
Columbia, SC 29202
jimkoutrakos@callisontighe.com

2017 SEP 20 PM 3:14
JULIE J. ARMSTRONG
CLERK OF COURT

Debbie Hill

ROSEN | HAGOOD

John E. Rosen
jrosen@rrhlawfirm.com

September 20, 2017

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: Carpenter Braselton, LLC v. Ashley Roberts, et al.
Civil Action No.: 2016-CP-10-1560

Dear Ms. Armstrong:

Enclosed please find an original and two (2) copies of Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment in connection with the above-referenced matter. Please file the original and return the filed stamped copies to me via my courier.

By copy of this letter, I am providing counsel for the Defendant with a copy of this correspondence.

This Motion is scheduled to be heard before Judge Scarborough on September 21, 2017 at 2:00 p.m.

With kind regards, I am

Sincerely yours,

John E. Rosen

JER/dlh
Enclosure

cc: The Honorable Mikell R. Scarborough (hand delivery)
Demetri K. Koutrakos, Esq. (via email and U.S. Mail)
Edward Terry (via email)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 14 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-1560

CARPENTER BRASELTON, LLC, ... Appellant,

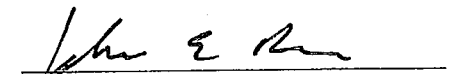
vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

NOTICE OF APPEAL

Carpenter Braselton, LLC, appeals the Order of the Mikell R. Scarborough, Master-in-Equity dated November 8, 2017 and filed on November 14, 2017, granting Summary Judgment to Defendants Ashley Roberts, Jeremy Cook, and Salaheddine Ezzaoudi. Appellant received written notice of entry of this order via e-mail on November 17, 2017.

[SIGNATURE ON FOLLOWING PAGE]



John E. Rosen
ROSEN, ROSEN & HAGOOD, LLC
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Charleston, SC 29401
(843) 577-6726 (o)
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ATTORNEYS FOR APPELLANT

Charleston, South Carolina
December 12, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Case No. 2016-CP-10-1560

RECEIVED
DEC 14 2017
SC Court of Appeals

Carpenter Braselton, LLC,

Plaintiff,

vs.

Ashley Roberts; Jeremy Cook; and Salaheddine Ezzaoudi,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

JULIE J. ARMSTRONG
CLERK OF COURT
2017 NOV 14 PM 2:17
FILED

This matter was referred to me by order of reference entered April 3, 2017, and came before me on September 21, 2017, on a motion for summary judgment filed by Defendants Ashley Roberts n.k.a. Ashley Roberts Cyronak, Jeremy Cook, and Salaheddine Ezzaoudi ("Defendants"). Defendants moved for summary judgment on their Counterclaims and on Plaintiff's Complaint arguing there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law.

Demetri K. Koutrakos, Esquire appeared on behalf of Defendants. John E. Rosen, Esquire appeared on behalf of Plaintiff.

After considering the briefs and materials submitted by the parties and the arguments of the parties, I find Defendants are entitled to summary judgment and, therefore, grant Defendants' motion for summary judgment.

FACTS

The facts viewed in the light most favorable to Plaintiff, the non-moving party, are as follows:

1. **Subdivision of the property and the Plat.**

In 1990, the heirs of James Roper subdivided an 11.95-acre tract to create five lots, Lots C-1, C-2, C-3, C-4, and C-5, with a private road to access those lots. The property was surveyed by F. Elliotte Quinn, III, a professional land surveyor, who prepared a plat entitled "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA." This plat was recorded December 31, 1990, in the RMC Office for Charleston County in Plat Book CB at Page 130 ("the Plat").

Charleston County was required to approve the subdivision of the 11.95-acre tract into five lots. On June 22, 1989, Mr. Quinn's surveying company applied for subdivision approval. During the permitting and approval process for the subdivision, the Charleston County Planning Board determined that one of the five lots, Lot C-1, met the current minimum health department standards for a modified conventional sub-surface disposal system.

The Charleston County Planning Board, based on a letter from DHEC dated September 6, 1989, determined that four of the five lots, Lots C-2, C-3, C-4, and C-5, did not meet the current minimum health department standards for a modified conventional sub-surface disposal system.

On July 5, 1989, the Heirs of James Roper wrote the Charleston County Planning Board and stated as follows:

> Re.: Application #13511; Heirs of James Roper
>
> Dear Sirs:
>
> We the Heirs of James Roper would like to request variances from sections of the Charleston County Subdivision regulations due to the fact that we are trying to subdivide this tract for family purposes. We as heirs of James Roper, Sr. are ourselves getting old and would like to straighten out the title of this property prior to our deaths so that our children and grandchildren don't have the problems associated with heirs property.

> Through the years this tract which once stretched from Riverland Drive to the marshes of the Stono River, has been subdivided until this 5.95 Acre tract remained with only a 20' access connecting it to Bradham Road. We cannot give an additional 5' for road right-of-way due to the fact that a great portion of it would have to come from someone else's property. We are aware that this land possesses very poor soil conditions for septic systems and would like to request that the subdivision be approved with the stipulation that any lot which will not support a septic system be restricted from becoming a building lot until such time that public sewer service can be provided to that lot.
>
> Please consider our request and thank you for your time.

According to Mr. Quinn, the Charleston County Planning Board then required the following language be placed on the Plat:

- THIS LOT MEETS CURRENT MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM (FOR LOT C-1 ONLY)
- THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES[1]

Quinn Aff. ¶ 8.

Also, according to Mr. Quinn, these notations were placed on the Plat by Charleston County to indicate that Charleston County would not, at that time, approve building permits for Lots C-2, C-3, C-4, and C-5, because those lots did not meet current minimum standards for a modified conventional sub-surface disposal system. Lot C-1 did meet the current minimum standards for a modified conventional disposal system, and that is why Charleston County did not say Lot C-1 was not to be used for building purposes. *Id.* ¶ 9.

Mr. Quinn further stated in his affidavit that these notations on the Plat were not requested to be placed on the Plat, and were not placed on the Plat, by or at the request of the

[1] This language is derived from Standard Subdivision Stipulations that Charleston County used at that time. *Chas. Planning Dept. FOIA* Response 3/7/17 p. 4.

heirs of James Roper and these notations on the Plat were not, and are not, restrictions from use placed on Lots C-2, C-3, C-4, & C-5 by the heirs of James Roper. *Id.* ¶ 10.

The heirs of James Roper indicated to Mr. Quinn they wanted the ability to build residential homes on all five lots. Charleston County required that each lot be suitable for a septic system before issuing building permits. At that time, lots would not be suitable for a septic system if they did not "perk."[2] At that time, Charleston County would not permit septic systems on four of the lots because four of the lots did not "perk." Apparently, at that time, Lot C-1 did perk, but the others did not. That is why Charleston County placed a different notation for Lot C-1 on the Plat. *Id.*

These notations were placed on the Plat by Charleston County to warn buyers of issues related to sewer disposal services. *Id.* ¶ 11. Charleston County would not permit buildings to be placed on Lots C-2, C-3, C-4, and C-5 because, at that time, those lots did not meet the current minimum standards for a sewer disposal system, because those lots did not "perk." *Id.*

The Plat was approved by Charleston County, as indicated on the Plat, on December 4, 1990.

2. Acquisition of Lots.

A. Lot C-5: Plaintiff Carpenter Braselton, LLC.

Lot C-5 is described as follows:

> All that certain lot, piece or parcel of land, situate, lying and being at the end of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 31,845.3 square feet of highland and six (6) acres of marshland, more or less, and known and designated as LOT C-5 on a plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND,

[2] A perc or perk test is or was used to evaluate the suitability of soils for septic tank systems to see if the soil properly absorbs fluids.

CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to Carpenter Braselton, LLC by deed of Herbert Brown dated November 10, 2014, and recorded November 12, 2014, in the RMC Office for Charleston County in Book 440 at Page 255.

TMS: 341-00-00-029

Plaintiff Carpenter Braselton, LLC owns Lot C-5. Plaintiff purchased Lot C-5 by deed of Herbert Brown dated November 10, 2014, and recorded November 12, 2014, in the RMC Office for Charleston County in Book 440 at Page 256.

Herbert Brown acquired the property by deed of Virginia R. Brown a/k/a Virginia Roper Brown, dated February 22, 1995, and recorded February 22, 1995, in the RMC Office for Charleston County in Book U-252 at Page 034; by Decree Quieting Title (Case No: 07-CP-10-1185) dated June 7, 2007, and filed in the Clerk of Court of Common Pleas on June 13, 2007, ordered by the undersigned ("Decree Quieting Title"); and by confirmatory deed of the undersigned, dated June 15, 2007, and recorded July 10, 2007, in the RMC Office for Charleston County in Book T-631 at Page 283.

Lot C-5 is unimproved. Of all the lots in this case, Lot C-5 is closest to the Stono River.

B. Lot C-4: Defendant Salaheddine Ezzaoudi.

Lot C-4 is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on the South Side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 24,0062.7 square feet of land, more or less and known and designated as Lot C4 on a plat entitled "Plat of the Subdivision of 11.95 acre tract (5.95 highland) owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina", made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130, RMC Office for Charleston County.

BEING the same property conveyed to Perciel R. DeLaine, James A. Roper, III, Mildred R. Anderson, Ruby Roper and Raymond Roper by Decree Quieting Title (Case No: 07-CP-10-1185) dated June 7, 2007 and filed in the Clerk of Court of Common Pleas on June 13, 2007 ordered by the Honorable Mikell R. Scarborough, Master in Equity for Charleston County and by Master's Deed dated June 15, 2007 and recorded July 10, 2007 in the RMC Office of Charleston County in Book T631 at Page 287.

TMS No: 341-00-00-072

Defendant Salaheddine Ezzaoudi owns Lot C-4, having acquired it from Perceil R. Delaine, James A. Roper, III, Mildred R Anderson, Ruby Roper and Raymond Roper by Deed executed on various dates in 2013 and recorded August 1, 2013, in the RMC Office for Charleston County in Book 349 at Page 974.

Perceil R. DeLaine, James A. Roper, III, Mildred R. Anderson, Ruby Roper and Raymond Roper acquired Lot C-4 by the Decree Quieting Title and by confirmatory deed of the undersigned, dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 287.

Lot C-4 is unimproved.

C. Lot C-3: Defendants Ashley Roberts and Jeremy Cook.

Lot C-3 is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on the South side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 23,669.9 square feet, more or less, and known and designated as Lot C3 on a plat entitled "Plat of the Subdivision of a 11.95 tract (5.95 Highland) owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina" made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989, and recorded on December 31, 1990 in Plat Book CB, Page 130, RMC Office for the County of Charleston.

BEING the same property conveyed by Deed from Mikell R. Scarborough, as Master in Equity for Charleston County, to Ruth Craig dated June 15, 2007 and recorded July 10, 2007 in Deed Book T631 at Page 279.

TMS No: 341-00-00-073

Defendants Ashley Roberts and Jeremy Cook own Lot C-3, having acquired it from Ruth R. Craig, by her attorney-in-fact Percile DeLaine, by Deed dated September 6, 2007, and recorded September 11, 2007, in the RMC Office for Charleston County in Book J638 at Page 712.

Ruth R. Craig acquired Lot C-3 by the Decree Quieting Title and by confirmatory deed of the undersigned, dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 279.

On July 30, 2007, the City of Charleston Department of Planning approved the plans for the construction of a home on Lot C-3.[3] The City of Charleston Department of Planning noted as follows:

> The plans submitted for the development of the above referenced property have been reviewed and approved by the City of Charleston Zoning Division and Architecture & Preservation Division.
>
> The above referenced property has a base zoning classification of SR-1 (Single Family Residential) under the City of Charleston Zoning Ordinance. The use of "881. One family detached dwelling" is a permitted use in the SR-1 district. There are currently no pending zoning violations on this property. Legal non-conforming uses are subject to the restrictions contained in Article 1, Part 2 of the Zoning Ordinance.
>
> The architectural and structural design including all necessary elevation and plan views were in accordance with building requirements set by the Board of Architectural Review (BAR).

Defendants Ashley Roberts and Jeremy Cook constructed a home on Lot C-3, which construction was completed February 5, 2009.

---

[3] The Planning Department provided this approval for construction of a home on both Lot C-3 and Lot C-2, although a home was only constructed on Lot C-3.

D. Lot C-2; Defendants Ashley Roberts and Jeremy Cook.

Lot C-2 is described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on the south side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 1.26 acres, more or less, and known and designated as Lot C2 on a plat entitled "Plat of the Subdivision of a 11.95 acre tract (5.95 Highland) owned by James Roper to create 5 lots on James Island, Charleston County, South Carolina" made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989 and recorded on December 31, 1990, in Plat Book CB, Page 130, in the RMC Office of the County of Charleston.
>
> BEING the same property conveyed by Deed from Mikell R. Scarborough, as Master in Equity for Charleston County, to John Fleming dated June 15, 2007 and recorded in Deed Book T631 at Page 275.
>
> TMS No: 341-00-00-074.

Defendants Ashley Roberts and Jeremy Cook own Lot C-2 having acquired it from John W. Fleming by Deed dated September 6, 2007, and recorded September 11, 2007, in the RMC Office for Charleston County in Book J638 at Page 717.

John W. Fleming acquired Lot C-2 by the Decree Quieting Title and by confirmatory deed of the undersigned, dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 275.

Lot C-2 is unimproved.

3. <u>This Action</u>.

A. Plaintiff.

Edward L. Terry is the authorized agent of Plaintiff. His wife is the sole member and manager of Plaintiff. Mr. Terry has developed numerous subdivisions in multiple states. He has developed approximately 20 subdivisions in South Carolina. Some of the subdivisions he developed were restricted by traditional covenants, conditions, and restrictions. Mr. Terry was

extensively involved in the purchase of the property, reviewing documents and visiting the property.

B. Plaintiff's Complaint.

On March 28, 2016, Plaintiff filed this action against Defendants. Plaintiff claims the notation on the Plat that Charleston County mandated be placed on the Plat and which provides "THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES," creates a restriction that the lots not be used for building purposes and be limited to agricultural uses.

Plaintiff has asserted claims for injunctive relief and declaratory relief.

C. Defendants' Answers and Counterclaims.

Defendants denied the material allegations of the Complaint and asserted various affirmative defenses.

Defendants asserted counterclaims for declaratory relief asking the Court to declare Defendants own their lots free and clear of any use restriction claimed to be created by the Plat and the claims of Plaintiff and its successors and assigns.

Defendants asserted counterclaims to quiet title to their respective lots in their respective names free and clear of any claimed restriction and of any right, title, claim, lien, or interest of Plaintiff and its successors and assigns.

4. Plaintiff's Adjacent Property.

In its Complaint, Plaintiff claims it derives a benefit from the alleged restriction. Among other benefits, Plaintiff claims the restriction allows Plaintiff to experience and benefit from the "views, peace, and comfort of the undeveloped properties." *Complaint* ¶ 23.

Despite this claimed concern by Plaintiff regarding "views, peace, and comfort of the undeveloped properties," Plaintiff constructed a two-story single-family residence on property it owns adjacent to Lot C-5, which property is located at 2284 Lucky Road. *Terry Dep.* p. 37, ex. 11. Plaintiff constructed a two story "Barn," which has horse stables on the first floor. *Id.* The second floor contains an office apartment with two bedrooms and one bath. People spend the night at this building. *Id.* p. 38.

ANALYSIS/DISCUSSION

"The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998)).

With that in mind, "restriction[s] on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). In addition, "a covenant must express the purpose of the parties thereto to be valid and enforceable and it must not be too indefinite." *Vickery v. Powell*, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976).

In construing restrictive covenants, ambiguities must be strictly construed against the party seeking to enforce them, here, Plaintiff, and strictly against limitations upon the property's free use. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893-94 (1987);

Seabrook Island Prop. Owners Assoc. v. Marshland Trust, Inc., 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004); *Hyer v. McRee*, 306 S.C. 210, 212, 410 S.E.2d 604, 605 (Ct. App. 1991).

Where there is doubt, the doubt must be resolved in favor of the property's free use. *Hyer*, 306 S.C. at 212, 410 S.E.2d at 605. Where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).

As I am required to do, I reviewed the four corners of the Plat to determine whether the notations on the Plat create a restriction on use by express terms or by plain and unmistakable implication.

From a review of the Plat and considering all matters shown within the four corners of the Plat, and not considering any extrinsic evidence, I find and conclude the notations on the Plat related to agricultural use were placed on the Plat by Charleston County. It is very clear to me that the subject notations were not placed on the plat by either the surveyor or the owners of the property. Charleston County placed these notations on the Plat as part of its approval process. After all, the Plat is stamped approved as an "approved final plat" by Charleston County, with an associated planning board number. The other notations including the notations in question are in the same or similar typeface and without question were placed on the Plat by Charleston County.

These notations and markings placed by Charleston County on the Plat are:

THESE LOTS C-2, C-3, C-4 & C-5
FOR AGRICULTURAL USE ONLY,
NOT TO BE USED FOR BUILDING
PURPOSES

THIS LOT MEETS CURRENT MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY. (FOR LOT C-1 ONLY)

THE APPROVAL OF THIS PLAT IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO ACCEPT FOR CONTINUED MAINTENANCE ANY OF THE ROADS OR EASEMENT SHOWN HEREON.

WARNING!
APPROVAL OF THIS PLAT BY THE PLANNING BOARD AND/OR COUNTY COUNCIL DOES NOT INDICATE APPROVAL NOR ADJUDICATE TITLE OF THE ACCESS OR RIGHT-OF-WAY SHOWN HEREON

APPROVED FINAL PLAT
Beverly J. Kraeuer
CLERK, CHARLESTON COUNTY COUNCIL
William W. Miller
DIRECTOR OF PLANNING
CHARLESTON COUNTY PLANNING BOARD
DATE DEC. 4, 1990
PB # 13511

By reviewing and considering all matters shown on the Plat and not considering extrinsic evidence, the notations on the Plat related to agricultural use are due to Charleston County's determination at that time that the four lots did not meet the current minimum health department standards for a modified conventional sub-surface disposal system. However, if sewer or a modified conventional sub-surface disposal system would become available, then the lots could be used for building purposes.

Because the notations on the Plat do not create restrictions, and certainly do not create restrictions enforceable by Plaintiff, Defendants are entitled to summary judgment.

In addition, if I were to find the notations on the Plat created an ambiguity as it relates to the issues raised in this case, I would certainly reach the same conclusion.

It is a question of law for the court whether the language of a contract is ambiguous. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (citing 17A Am. Jur.2d *Contracts* § 338, at 345 (1991)). Once the Court decides the language is ambiguous, evidence may be admitted showing the intent of the parties. *Id.*

"A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation." *See Hawkins*, 328 S.C. at 592, 493 S.E.2d at 878-79. Again, where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).

If the Court had found the notations on the Plat to be ambiguous, the Court must then look at extrinsic evidence to determine the intent of the parties. At the same time, the Court must remember the essential guideposts created by our case law that, where there is doubt, the doubt must be resolved in favor of the free use of property and where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored.

Here, the evidence conclusively shows the owners of the property at that time, the Heirs of James Roper, did not want the property restricted. They sought a variance to allow the subdivision of the lots. Because the lots were not suitable for a septic system, Charleston County placed the notations on the Plat. The owners of the property wanted the lots to be used for residential purposes when sewer was available. As a result, the undisputed extrinsic evidence shows there was no intent to create a private restriction on the use of the lots. *See Hamilton v.*

CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 382 (1980) (ambiguities must be resolved in favor of the free use of property).

Plaintiff relies on the following language in some of the deeds: "conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises." Plaintiff concludes the "subject to" language creates a restriction.

This language does not create a restriction. It is just a limitation on the general warranty provided in the respective deeds. Even though a conveyance "is made 'subject to' restrictions set forth in some other deed or instrument referred to will not, without more, make the restrictions applicable to the property conveyed, if in fact the restrictions do not otherwise apply thereto." 20 Am. Jur. 2d *Covenants, Conditions, and Restrictions* § 151 (2017).

In addition,

> If the "subject to" language of the instrument in question refers to restrictions which in fact do not exist at all at the time of the conveyance, it does not operate to impose the supposed restrictions on the granted land; nor does a conveyance made expressly subject to restrictions existing on the conveyed land "if any such there be" thereby impose restrictions where none existed theretofore. A conveyance of land with warranties which are expressly made "subject to" the restrictions set forth in a certain instrument referred to does not subject the conveyed lands to the restrictions so designated when by their terms the restrictions do not apply to such land. *While conveyances "subject to" restrictions give notice that such restrictions are of record, they are not an acknowledgment of the validity of such restrictions.*

Id. (emphasis added).

Here, just because some of the deeds provide the property is being conveyed subject to restrictions that "may appear of record on the recorded plats," that language does not create a restriction where none exists. Nor does this language create a restriction when there is no plain and unmistakable implication to create a restriction. I have already concluded no restrictions are

created by the subject notations on the Plat; therefore, this language in some of these deeds does not create a restriction where none exists.

After viewing the evidence in the light most favorable to Plaintiff, I find there are no genuine issues of material fact and Defendants are entitled to summary judgment in their favor on Plaintiff's Complaint and on Defendants' Counterclaims.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

A. Defendants' summary judgment motion is granted.

B. Defendants are entitled to summary judgment in their favor on Plaintiff's Complaint and in their favor on their Counterclaims.

C. Defendants Ashley Roberts n.k.a. Ashley Roberts Cyronak and Jeremy Cook, their heirs, successors, and assigns, own Lot C-3 and Lot C-2 free and clear of any use restriction claimed to be created by the Plat and the claims of Plaintiff and its successors and assigns.

D. Title to Lot C-3 and Lot C-2 is quieted in the names of Defendants Ashley Roberts n.k.a. Ashley Roberts Cyronak and Jeremy Cook, their heirs, successors, and assigns, free and clear of any claimed restriction and of any right, title, claim, lien, or interest of Plaintiff and its successors and assigns.

E. Defendant Salaheddine Ezzaoudi, his heirs, successors, and assigns, owns Lot C-4 free and clear of any use restriction claimed to be created by the Plat and the claims of Plaintiff and its successors and assigns.

F. Title to Lot C-4 is quieted in the name of Defendant Salaheddine Ezzaoudi, his heirs, successors, and assigns, free and clear of any claimed restriction and of any right, title, claim, lien, or interest of Plaintiff and its successors and assigns.

G. A copy of this order shall be recorded in the Charleston County RMC and indexed in the grantor index under the name Carpenter Braselton, LLC and in the grantee index under the names Ashley Roberts n.k.a. Ashley Roberts Cyronak, Jeremy Cook, and Salaheddine Ezzaoudi.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Master-In-Equity

1/8, 2017
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 14 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-1560

CARPENTER BRASELTON, LLC, ... Appellant,

vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

PROOF OF SERVICE

I do hereby certify that on December 12, 2017 I served all counsel in this action with a copy of the document herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following address:

Document: **NOTICE OF APPEAL**

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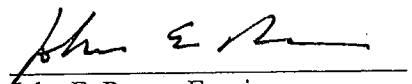
[SIGNATURE ON FOLLOWING PAGE]



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ATTORNEY FOR APPELLANT

Charleston, South Carolina
December 12, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
	CASE NO: 2016-CP-10-1560
CARPENTER BRASELTON, LLC,)	
)	
PLAINTIFFS,)	
)	
-VS-)	DEPOSITION OF:
)	EDWARD LEE TERRY
ASHLEY ROBERTS, JEREMY)	
COOK, SALAHEDDINE)	
EZZAOUDI,)	
)	
DEFENDANTS.)	

Given before Annie Holbrook, Court Reporter and Notary Public, at Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Charleston, South Carolina, on Wednesday, March 22nd 2017, commencing at 10:30 a.m.

Job No. CS2529680

purchased it.

A: In this case, it was a benefit to me to be restricted to agricultural use. That's the other lots, too.

Q: So, your concern was not with your lot but with the other lots being restricted.

A: Well, all the lots and all. Now again, you're telling me that the Roberts' house was built earlier. Well, okay, I accept that.

Q: Well, was that the primary reason why you bought the property is because you believe other lots were restricted to --

A: Correct.

Q: Let me --

A: Two things; it added to my farm and also in any other houses being built down there which is the reason for this lawsuit today.

Q: Okay. So, would you have bought Lot C5 anyway?

A: I don't know. Again, probably for not that kind of money. For $5,000 probably yes. But again, I was happy with the bargain.

Q: Okay. I understand what you're claiming in this case. Let me ask you this. You look at this plat prior to purchasing and you see that there is five lots shown on this plat. Correct? Is

do to confirm that there actually were restrictions on C2, C3, C4, and C5?

A: I relied on the recorded plat that the county has approved.

Q: That's it? Okay. You didn't see any signatures on this. Correct?

A: I see the signatures you're talking about.

Q: Right. But there's no signatures right underneath the notations that you're relying upon.

A: No. But it's on the plat.

Q: Okay. And when you read that these lots, C2, C3, C4, and C5 language, when you read it in conjunction with the language to the right of that regarding C1, would you agree with me, reading those two paragraphs together that the reason why C2, C3, C4, and C5 were restricted from agricultural use is because those lots didn't meet current minimum health department standards for a modified conventional sub surface disposal system?

MR. ROSEN: Object to the form.

A: I think you're just speculating. You don't have a clue any more than I do.

Q: Okay. Do you have any signed writing by any

prior owner of Lot C5 where that prior owner restricts the use of Lot C5?

A: I relied on this.

Q: And this --

A: My title insurance company told me it was restricted. I relied on them. So, I don't have anything that I'm aware of that Herbert Brown did anything beyond because he didn't need to. The plat restricted it. He couldn't change it if he wanted to.

Q: It looks like Ashley Roberts changed it. She's got a house on her property.

A: You'll have to ask Ms. Roberts. I haven't talked to her.

Q: Okay. Have you ever talked to Sal Ezzaoudi?

A: I don't think I have.

Q: Do you know who he is?

A: I'll assume you're talking about one of the lot owners.

Q: Correct. The owner of Lot C4.

A: Okay. All right.

Q: Have you ever talked to him before?

A: Not that I'm aware of.

Q: You know he listed his property for sale at one point in time?

Q: Have you investigated to see who put the restrictions on the plat?

A: Quite honestly, no. I've never investigated it. I accept them on face value.

Q: Okay.

DEFENDANT'S EXHIBIT 8 MARKED FOR IDENTIFICATION.

Q: I'll show you what's been marked as Exhibit number 8. I assume you've seen this before?

A: I have.

Q: Exhibit number 8 is the complaint that you filed against my client.

A: Yes.

Q: Okay. Are you familiar with that?

A: I am.

Q: Did you review it prior to it being filed?

A: I'm sure I did. I try to be diligent.

Q: On paragraph 16 --

A: That is correct.

Q: It says, "Plaintiff purchased Lot C5 in reliance on the agricultural restrictions stages in the plat that created and limited the use of Lots C2, C3, C4, and C5." Do you see that?

A: I see that. Yes.

Q: And the evidence that you relied upon that you've testified to today would be that you review the

plat. Right?

A: Review the plat and also was alerted by the closing attorney --

Q: Closing attorney.

A: -- that there were restrictions and by the title insurance binder that it was restricted.

Q: Three things; you reviewed the plat, the attorney told you, and the title insurance binder.

A: And I relied on that.

Q: Yeah. Anything else other than those three things?

A: I don't know. That's very much face value. There was restriction there. I accepted it and relied on it.

Q: Okay. But other than those three items that you've already testified to, there's nothing more than that?

A: I'm not aware of what else it might have been.

Q: Okay.

A: It's pretty much face value. There's a restriction.

Q: Okay.

A: And let's refer back to 14 on that, too, that reinforces it.

Q: What's 14? Yeah. The way you alleged in

doesn't mean you don't have to investigate it. Do you agree with me?

A: I don't know, sir.

Q: Okay. Just because you relied on something, doesn't absolve you of any duty that you may have to investigate. Would you agree with me?

A: I don't know. I'm not qualified to go down that road with you.

Q: Okay. Paragraph 12 of your complaint. You said the deeds conveying lot C2, C3, C4, and C5, though the defendants and plaintiffs specifically state that the conveyances are being made subject to all restrictions, reservations, easements and other limitations that appear of record including on the recorded plats. Do you see that?

A: I see that. Yeah.

Q: Can you show me where the deed to your Lot C5 Exhibit A in front of you says anything about that the conveyances being subject to restrictions, reservations, easements, and other limitations that appear of record including on the recorded plats?

A: Well, yes. It says, "It has been granted, bargained, of sale and released subject to those matters set forth on Exhibit A. Let's go to

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Carpenter Braselton, LLC,

Plaintiff,

vs. CASE NO. 2016-CP-10-1560

Ashley Roberts; Jeremy Cook; and Salaheddine Ezzaoudi,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 3:55 p.m. on September 21, 2017 at 100 Broad Street, Charleston, South Carolina.

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PROCEEDINGS

THE COURT: Mr. Koutrakos, Mr. Rosen, you-all are here on Carpenter Braselton, LLC, Plaintiff, versus Ashley Roberts, Jeremy Cook, you have to help me with the next one.

MR. KOUTRAKOS: Salaheddine Ezzaoudi.

THE COURT: Salaheddine Ezzaoudi, LLC, and CCT Reserved, LLC, 2016-CP-10-1560. This is -- we're here today on the Defendant's Motion for Summary Judgment. I've gotten a bevy of reading. I appreciate that. I've had a chance to read it.

My first question out of the shoot that I was going to ask you was -- and I think I've answered this for myself. I think I know. What gave the Plaintiff standing to bring the action? The Plaintiff is the possessor or the owner of one of the lots on this subdivided property, correct?

MR. KOUTRAKOS: Correct, C-5.

THE COURT: That standing wasn't brought up.

MR. KOUTRAKOS: I have not raised it. I would be more than happy to look at it. I would have raised it if I thought it was an issue.

THE COURT: I'm trying to recall correctly. It's C-1 through 5, and I'm assuming Mr. Terry, who

is the agent for Carpenter, I'm assuming they're the one on the water but I don't know. Is it the other way around? C-1 on the road and C-5 on the water?

MR. KOUTRAKOS: I think C-5 is closer to the marsh. You're right.

THE COURT: Okay. Mr. Koutrakos?

MR. KOUTRAKOS: All right, Your Honor. May it please the Court? I want to hand up a notebook to make your life easier. All the exhibits are tabbed. What I've done is I've attached my brief to the front part of the notebook, and I also have a map, a larger version of the map in question that I can show you if I can approach?

THE COURT: That would be fine. Yes, sir. Thank you.

MR. KOUTRAKOS: I gave Mr. Rosen the exact same thing I just handed up to you.

THE COURT: I've got it. Okay.

MR. KOUTRAKOS: Your Honor, may it please the Court? I represent three Defendants in this case: Ashley Roberts, Jeremy Cook, and Salaheddine Ezzaoudi. Mr. Ezzaoudi is here today. Ashley and Jeremy really wanted to be here. Ashley is currently in California, and Jeremy is in Alaska. This case is very important to them. Otherwise, they would be

here but the distance has prohibited them from being here.

The Plaintiff in this case is Ted Terry. He is a seasoned real estate developer. He's developed numerous subdivisions around the southeast including in South Carolina. He filed this action seeking an order finding that certain notations placed on the plat by Charleston County restrict the property owned by my clients. The notations -- I think it's undisputed but the notations were placed there by Charleston County because some of the lots did not meet the minimum standard -- the minimum health department standards for a modified conventional sub or subsurface disposal system which to me means septic. That's what that means to me.

It's my client's position and it's what this information is based on -- the notations on the plat are not restrictions put on the property placed by the owners of the property at the time. Instead, the notations on the plat were put there by the County to comply with whatever requirements they have, whatever, and any conditions they issued for that plat to be approved.

For those reasons and for reasons I'll go into in more detail, my clients are good for summary

judgment. The 1990 plat, which you're looking at, was prepared by Eliotte Quinn, a surveyor here in town, and he was hired by the heirs of James Roper to create this plat.

Originally it was 11.95 acres, and he subdivided it into five lots. As you can see there is -- closer to the marsh if you will, there is Lot C-5. That's the Plaintiff's property.

There is Lot C-4. That's owned by Mr. Ezzaoudi. Lot C-3 and C-2 are owned by Jeremy Cook and Ashley Roberts. Lot C-2 has a home on it. It's had a home on it since about 2007. I'll go into more details about that.

Charleston County had to approve this plat, a typical subdivision plat.

THE COURT: Let me stop you. Is Lot C-1 in the litigation at all?

MR. KOUTRAKOS: Lot C-1 is not in the litigation. We'll talk about the reason why in a second. When Charleston County was going through its approval process it determined that only Lot C-1 -- and that's why they're not included in this lawsuit -- only Lot C-1 met the current minimum -- the key word being current -- minimum standards, health department standards for a modified conventional

disposal system.

In your review of what I looked at, C-2 and C-5 didn't meet those standards. There are documents in the summary judgment record which support that. In going through the approval process the heirs of James Roper wrote Charleston County, and it's a letter -- it's in the record. It is Page 24 of Exhibit No. 3.

Exhibit No. 3, just for Your Honor's reference, is just a whole file from the Charleston County Planning Commission that I obtained through Freedom of Information. If you look at the Request to Admit there -- they're numbered on the bottom, so it would be Page 24 of that Bates number of Exhibit No. 3.

The letter starts out, We, the Heirs of James Roper, would like to request variances from the sections of the Charleston County Subdivision regulations due to the fact that we are trying to subdivide this tract for family purposes.

Towards the end of the letter the heirs of James Roper say, We are aware that this land possesses very poor soil conditions for septic systems and would like to request that the subdivision be approved with the stipulation that any

lot which will not support a septic system be restricted from becoming a building lot until such time that public sewer can be provided to that lot.

Charleston County then pursuant to their requirements required certain things be put on the plat, and if you look at the bottom right quadrant of the plat you'll see a bunch of writing there, and those are all from Charleston County. If you look under -- it's right under Bradham Road, Your Honor, there is an indication there that says, This lot meets current minimum health department standards for a modified conventional subsurface disposal system, and it says in parenthesis, For Lot C-1 only.

To the left of that it says, These lots C-2, C-3, C-4, and C-5, are for agricultural use only, not to be used for building purposes. That is a standard Charleston County exception as a condition at that time that they put on plats. I've pulled other plats but I can tell you that is something from what's even in the summary judgment record in that Charleston County Planning Department file. It's one of their standard stipulations that they put on plats when there is not -- when it is not a desirable sewer situation.

THE COURT: I'm familiar with that.

MR. KOUTRAKOS: Okay. So I've submitted the Affidavit of Elliotte Quinn. As Mr. Quinn prepared the survey he talks about the notations put on the plat, why they were there. He said Charleston County was required -- that's Exhibit Tab No. 2 in the notebook. Charleston County was required to approve the subdivision. The plat was approved by Charleston County as of December 4, 1990. As part of the approval process Charleston County made various notations on the plat, talked about the notation I just presented to the Court, and he says, These notations placed on the plat by Charleston County were for the purpose of indicating that Charleston County would not at that time approve building permits for Lots C-2, C-3, C-4 and C-5 because those lots did not meet minimum current standards for a modified conventional subsurface disposal system.

He goes on in Paragraph 9 of his affidavit to say that lot C-1 did meet that standard, and that's why there was a different notation for lot C-1. He also says that these notations were not requested to be put on the play by the heirs of James Roper. This is something that was required by Charleston County.

In addition, in Paragraph 11 he says, These notations were simply placed on the plat by

Charleston County to warn buyers of issues related to sewer disposal services. So that is what happened at the time looking back at the time when what we refer to as the 1990 plat was recorded.

The history of what happened after that, Lots were bought. There was a quiet title action, which we'll talk about later, but Lot C-5, which is the Plaintiff's lot, was purchased in 2004. Like we said, it's unimproved. C-4 was purchased by Mr. Ezzaoudi in 2013.

Ms. Roberts and Mr. Cook purchased C-3 and C-2 in 2007. On C-3, they obtained a Charleston County building permit. Charleston County approved the construction of a home on Lot C-3. They got a certificate of occupancy. It's a house that's there. It's a beautiful house that's there sitting on Lot C-3 today.

So Plaintiff filed this action seeking a declaratory relief and injunctive relief. We counterclaimed for declaratory judgment saying that this language on the plat is not a restriction, and we want the Court to find that my clients own the property free and clear on this claimed restriction, and we've also served a counterclaim for quiet title.

Interestingly enough --

THE COURT: Let me ask you about the building of the house. Is the house -- is it still in the County or is it now in the City, this property; do you know? Who gave the building permit?

MR. KOUTRAKOS: I'll tell you right now. That is actually an exhibit. Tab No. 5 is from the City of Charleston, and then the Certificate of Occupancy is by the City of Charleston. I hope that answers your question.

THE COURT: That would tell me it's in the City of Charleston.

MR. KOUTRAKOS: Right. And so interestingly the Plaintiff, he alleges that he's seeking this restriction -- this is what he says in his Complaint, To experience and benefit from the views, peace, and comfort of the undeveloped property. So he's saying I want peace. I want undeveloped properties around me. Even though when he bought the property in 2014 there was a significant home, a beautiful home on Lot C-3 owned by my clients and constructed there in 2007.

THE COURT: I must have gotten something wrong. Plaintiff purchased in '14?

MR. KOUTRAKOS: Yes.

THE COURT: And Mr. Ezzaoudi purchased in?

MR. KOUTRAKOS: 2013.

THE COURT: '13, all right.

MR. KOUTRAKOS: And Roberts and Cook, my other clients, purchased in 2007, C-2 and C-3.

THE COURT: And got the CO in 2009?

MR. KOUTRAKOS: Yes.

THE COURT: I've got it.

MR. KOUTRAKOS: And so the house has been there since 2009, but what the Plaintiff did -- the Plaintiff doesn't want construction on the remaining lots. I guess Mr. Rosen is going to have to clarify whether he wants my clients, Ms. Roberts and Mr. Cook, to actually knock down their house. I don't think they're claiming that.

But what he's done is he owns the property -- if you look at the plat it would be north of Lot C-5, the adjoining property. It's on a road called Lucky Road, and it actually adjoins Lot C-5. He goes ahead and builds a two-story structure, and I've seen pictures of it. It's a nice structure.

On the first floor there is a horse barn. On the second floor there's a single family residence. It's got two bedrooms, one bath, an office, and it was permitted to be a single family residence, and he testified in his deposition that sometimes people

spend the night there. So there is a single family residence right next to the lot, C-5, and it's the same lot that he's using as a basis to file this lawsuit and say, You guys can't build on your properties because I want peace and quiet. In any event --

THE COURT: Let me stop you there again. That might have been the source of my confusion. Mr. Terry -- where this structured barn, residence, whatever it is, it is on C-5?

MR. KOUTRAKOS: No. It's on property adjacent to C-5.

THE COURT: Adjacent?

MR. KOUTRAKOS: It's right next door. So it would be immediately, from what I understand, immediately north and touching, I believe, Lot C-5. That's my understanding. And so this is our argument, Your Honor.

THE COURT: C-5 is not built upon? That's my question.

MR. KOUTRAKOS: Yes. C-2 through C-5, they're all vacant except Lot C-3 where my clients, Cook and Roberts, built a home. They started in 2007, and got the CO in 2009.

THE COURT: All right.

MR. KOUTRAKOS: So our argument is that the notations on the plat do not create a restriction, and the general case law -- the principles set forth by South Carolina case law regarding interpretation of covenants and restrictions is very important in this particular case.

I know Your Honor has heard all of this stuff before, but the four or five principles that I think are definitely on point in this particular case is as follows. The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution.

The second principle is restrictive covenants are contractual in nature so that the paramount rule of construction is to ascertain and give, in fact, to the attention of the parties as determined from the whole document.

The third principle that I think is applicable is, Restrictions must be created in express terms or by plain and unmistakable implication and all such restrictions are to be strictly construed with all doubts resolved in favor of the free use of property.

Taking those -- in addition, ambiguities must be strictly construed against the party seeking to enforce the restriction and strictly against

limitations upon the properties for use. If there's doubt the doubt must be resolved in favor of the properties for use.

So basically if a -- if the language of an alleged restrictive covenant is capable of two different constructions, the construction which least restricts the property is favored. With those guideposts in mind, which I know Your Honor has heard before, I think you have to pull up the plat and just review the whole plat.

Mr. Rosen would say, and I don't know if I could disagree with him, that in order for you to make a determination as to whether this plat can be viewed in more ways than one, you have to look at the plat and look at the four corners of the plat. So let's take a look at the four corners of the plat.

If you review the document as a whole, we do know that the plat says that it was actually reviewed by Charleston County. So we know that. We know that Charleston County placed markings on the plat. Those are clearly markings on the plat. Clearly Charleston put their stamp of approval on it, and I think it's abundantly clear that Charleston County is the one who placed the notations and questions on the plat.

I think from looking at it the typeface is

different. It's similar to the other typeface that the County placed on the plat, and I think anybody, especially a sophisticated real estate developer like the Plaintiff who's developed at least -- out of 100 subdivisions around the southeast -- maybe I'm exaggerating, but it's a lot of subdivisions around the southeast -- would know that this language on the plat was put there by the County, which means that if the County says this property is zoned for a specific zoning purpose or if this lot doesn't have water and sewer, those things can change.

It's not a part of the restriction. It is a condition that the government, the county government, put on the plat in conjunction with its approval of the plat.

So the next question is: Do the notations on the plat create a restriction by express terms or unmistakable implication? The answer is, no. It doesn't. We can sit here and look at this and say, Well, is that notation -- was that put on the plat by the heirs of James Roper, or was it put on by the County because of the sewer system? Remember we have to read the plat as a whole, so to the right of the language in question that the Plaintiff is relying on, somebody is telling us that C-1 actually has good

septic. Right?

And there's no restriction on C-1. Then on C-2 through C-5 it's only for agricultural use and not for building purposes. Bringing those two things together we can conclude just by looking at the plat, not looking at intrinsic evidence, that the reason why C-2 through C-5 had this condition on it, is because they don't have proper water, sewer -- excuse me -- proper sewer or septic. If they do one day, it wouldn't be a restriction.

So I do not believe that the plat alone sets forth a restriction by plain and unmistakable implication or by any express terms. So the question is: Is there an ambiguity? Can you construe this language in more ways than one?

Mr. Rosen and the Plaintiff would say, Look, this language on the plat, it restricts it to agricultural use only. There is no other interpretation. I think the more reasonable interpretation is that this was a county-imposed condition. Maybe you can think Mr. Rosen and the Plaintiff's interpretation is reasonable? Maybe you can think mine is reasonable because you have a bunch of markings on the bottom right part of this plat that says it's from the County. So which one is it?

Well, if there are two reasonable interpretations of a restriction you must -- I don't want to say the Court must do anything, but the Court should -- the Court should view the restriction in the light most favorable for the use of the property. So I think at the very least there is doubt as to whether there is a private restriction on the plat.

The Court should reject what the Plaintiffs are trying to do and broaden this into something that it's not, and view that as a private covenant and restriction put on the property by the landowners. It's simply not the case.

Also, Your Honor, it's a question of law --

THE COURT: That was one of the reasons why I had that standing question in my mind. The lot that Mr. Terry's company owns, that the building is on, is not C-5. That's what I wanted to clear up.

MR. KOUTRAKOS: Correct.

THE COURT: And then he owned one of the lots, again Lot C-5, which is within the subdivision.

MR. KOUTRAKOS: Correct. Correct. Correct.

THE COURT: That takes care of that issue I believe, but that he also bought -- he bought -- subsequent to the Roberts' property having been developed.

MR. KOUTRAKOS: Correct.

THE COURT: A structure was on there.

MR. KOUTRAKOS: It would be five years, and so clearly when you look at the property there's a house on Lot C-3. There's no question. So at one point, Your Honor -- this is a Motion for Summary Judgment. You know we all have a Summary Judgment standard, but it's a question of law for the Court. It's for you to determine whether the language of this plat is clear or ambiguous. So that's a question of law for the Court.

If the Court finds -- if you say, You know what, good argument, John. Good argument, Jim. It's a close call. It could go either way. I find this ambiguous. Then you come to all these extremes together. So I talked about it to be blunt. I talked about a lot of extrinsic evidence, and if you look at the affidavit from the surveyor, you look at the entire Charleston County file, you can see the plat that was submitted, and the final plat. You can see them all -- the letters from the Ropers -- you can see everything in there that clearly shows that this was not a private restriction.

THE COURT: Take me to the plat that was actually submitted by Mr. Quinn. Is that --

MR. KOUTRAKOS: Okay. You're talking about to the Planning Commission?

THE COURT: Right.

MR. KOUTRAKOS: Okay. I would go to Tab No. 3, and I would start at Page 36, Bates stamp No. 36 on the bottom right-hand corner. You know, it's -- it's multiple pages, but as you can see -- it goes on and on. There's different -- you know, it goes on and on and -- I guess it's from 36 going forward. There are some pages in there, and it goes all the way up to Page 55, 56, 57, 58. There could have been multiple submittals I suspect, but literally going from 36 -- right now I'm up to 63.

Your Honor, I think it takes you the rest of the way through. It's different versions of the plat that were submitted. Well, here you go. You start getting to Page 78, and that's when you start seeing -- excuse me -- Page 80. That's when you start seeing what would be the final version of the plat with the markings on it.

THE COURT: Well, my specific question was, what was actually submitted?

MR. KOUTRAKOS: It would have been the surveys prior to Page 80, so it would have been from 36 to 79. The approved and stamped approved plat begins at

Page 80 that is basically Exhibit A cut up in numerous pages.

THE COURT: Okay.

MR. KOUTRAKOS: And Your Honor, we have other arguments that we made in our brief. I'd be more than happy to go through the planning commission documents and go through some more tidbits in there if you would like.

THE COURT: No. That's all right. I think I'm at Page 50. Do you see the -- I think on Page 49 you see the date it was received. It was received by the planning board sometime in '89. This is the bottom of the submission. The title is on Page 50. I can see no writing on 51 or 52, so the initial submission does not appear to have any of those stamps placed on there. I understand that. Okay.

MR. KOUTRAKOS: And if you can just give me one second?

THE COURT: In fact, what they signed appears on 54, but it's legible on Page 46, the heirs of James Roper and dedicating the 20-foot road right of way. They're not talking anything about the restrictions on the property. I can't read it on the one you gave me. Anyway, I'm just trying to verify.

MR. KOUTRAKOS: If you look at Page 12, Your

Honor, that is the Subdivision Application submission by Precision Land Surveying, which is the company for which Mr. Quinn worked at the time.

THE COURT: Yes.

MR. KOUTRAKOS: And it shows the submission sent on behalf of the heirs of James Roper, and the date received is June 27, 1989.

So Your Honor, the other arguments that we have are that the easement does not -- not the easement -- excuse me -- that the claimed restriction does not run with the land. I don't know how heavily we're going to rely upon that. I think our first argument that you just heard is a lot better.

One of the other things I want to know is -- you'll hear in the Complaint -- it makes a big deal that later deeds in the chain of title said, Subject to. Just because there is a general language you see in the deed, Subject to all restrictions, covenants of record, does not breathe life into something that is already not a valid covenant or restriction.

I cited the case law -- the only purpose that I've cited the case law is that language like that does not create a restricted covenant where none existed in the first place. So that is pretty much part of my brief where I argued that.

There was also a quiet title action that was filed that Your Honor heard, the Heirs of James Roper that quieted the title of each of the heirs -- each heir -- C-1, C-2, C-3, C-4, and C-5, and I'm arguing that cleared this covenant.

Your Honor for those reasons --

THE COURT: Is that order one of the exhibits as well?

MR. KOUTRAKOS: It's one of the exhibits, yes, and the confirmatory deeds that Your Honor signed are in there, but the primary argument is that the language does not create a restrictive covenant. It's provided by Charleston County and that it can be viewed in more ways than one. I think my client's view of what that language means is a reasonable one, but if Your Honor finds that it can be construed in more ways than one -- all the extrinsic evidence shows that that language was put there by Charleston County as a condition because the Ropers said, Hey, I want this subdivision plat to be approved and we know he's got bad septic, but it could be actually used as a house one day when that problem is rectified. That's the purpose of that.

So for those reasons, Your Honor, the Defendants move for Summary Judgment. Thank you.

THE COURT: Very good. Mr. Rosen?

MR. ROSEN: May it please the Court, Your Honor?

THE COURT: Thank you, sir.

MR. ROSEN: Your Honor, the Defendants glossed over the fact -- he mentioned it in his argument, but our argument is fairly simple, which is, without extrinsic evidence they don't have an argument. If you look at the four corners of the plat it's plain as day that it says right there that these lots C-2, C-3, C-4, C-5 are for agricultural use only and not to be used for building purposes.

I'm not going to belabor the standards of plain and ordinary meaning of those cases. It's all in the briefs that you are going to read, so I will say though that the plat was recorded December 31, 1990 before anyone bought these lots. They knew the plat was there. They knew the restriction. It's incorporated in the deeds that conveyed the lots to the various Defendants and my client. So to say they somehow didn't know this was out there is just not credible.

Number two, the plat is specifically referenced in the deeds as I mentioned. The deeds themselves stated the conveyances of Lots C-2 through

C-5 were being subject to all restrictions, reservations, easements and other limitations that appear of record including on the recorded plats. We don't see how extrinsic evidence is in any way allowed in this case.

The agricultural use restriction is not ambiguous. It prevents the Defendants from building on the property.

One thing I think that the Defendants touched on was that somehow -- it's kind of underhanded or not appropriate or proper that a restriction is created by a virtual plat when, in fact, the case law says, the Queens Grant II Horizontal Property Regime versus Greenwood Development, which is in the brief, says there's three ways to do it, by deed, by declaration, or by an implication from a general planner's scheme of development.

When a deed describes land shown on a plat, that plat becomes part of the deed. So that's our argument, Your Honor, that these deeds that convey the properties to the Defendants and the Plaintiff alike include a subject to reference to the plat and according to Defeo versus Community Services Associations, that case is in our brief as well. You'll see that --

THE COURT: That's the unpublished opinion, wasn't it?

MR. ROSEN: I don't think --

MR. KOUTRAKOS: That's correct. That's correct.

MR. ROSEN: There's another case, Marshall, which coupled with Defeo is the right one I'm thinking of, which says -- it makes it clear that where restrictive covenants on land use are indicated in express language on a plat especially where a prior purchaser relies on such restrictions sets limitations on use like for agricultural purposes only, will be binding on subsequent purchases of the lots like the Defendants in this case. So we think Marshall is very much on point in this matter.

The language, Agricultural Use Only, Not to be Used for Building Purposes couldn't be any clearer in our view. No extrinsic evidence is needed to understand this restriction. The text is plain, unambiguous and open to only one interpretation not multiple interpretations that the Defendants' Counsel would like you to entertain.

There's no affidavits or testimony that should be allowed to contradict the express terms on the plat. That's what they're trying to do by selling

their adjacent lots. They're trying to -- the Defendants purchased --

THE COURT: Mr. Rosen, let me ask you that question. What is you-all's remedy here? What are you-all seeking?

MR. ROSEN: We are seeking --

THE COURT: You're seeking Declaratory Judgment. They're not buildable lots, I understand, but your client -- I'm not aware of any law in this state which would give your client a right to a clear view through somebody else's lot.

MR. ROSEN: Your Honor, I agree. I think the relief we're asking for, Your Honor is simple, that the plat contains a restriction that limits the use as we just discussed and prohibits the use of said lots for building purposes, but the Defendants purchased their property subject to all restrictions and limitations of record including any recorded plats.

THE COURT: Do you-all seek injunctive relief to have -- I guess it's Mr. or Ms. Roberts remove the house? Is that the injunctive relief --

MR. ROSEN: No, Your Honor, we are not looking to do that at all. We're just trying to keep it as it is. So that's our requested declaration.

THE COURT: Anything further?

MR. ROSEN: I could keep going, but I just want to say one thing. If Your Honor did decide that extrinsic evidence was relevant then we would think that Summary Judgement would be inappropriate today because we would need to depose the other Defendants which we have not yet done. That's all in our brief, so I won't belabor the point.

THE COURT: I've read it. I've heard enough. Let me tell you-all. Good or bad, this is extrinsic evidence because it has to do with my background. I was 12 years on the County Planning Board. I saw this all the time. In fact, I once represented -- I probably didn't tell you this, but I once represented a neighborhood and the developer in his rush to get the plat recorded had allowed the County to put just that kind of stamp on there.

That is, without a doubt, to the Court's knowledge a County mandated stamp. The reason is because at the time the lots were created they did not meet current minimum Department of Health environmental standards for a septic system, modified, unmodified, whatever. Okay? So apparently Lot C-1 did, but 2 through 5 did not.

What I suppose, I don't know this for a fact

because it's not in the record, but apparently the Roberts' were able to build on that lot. I'm assuming there's sewer there. They've either got sewer or they've got a septic system that now works, one of the other. Otherwise that house would not have been built and a CO would not have been rendered.

I had a case in which -- like I say, I represented this guy. He was a developer. Anyway, long story short, I got to sue Judge Bill Howard. That wasn't my favorite move in my career, but anyway. I called him on the phone and told him I had to sue him. He said, That's fine, Mikell. Just send the papers right to me.

Ultimately it was -- that's when I first had dealings with this. That was in about 2002. That's before I went on the bench, of course. That's exactly what this is. I do not believe this to be a permanent and intentional restriction on property. It was a County criteria so that nobody would go out there and try and build on it. It's their notation that -- it's the County's way of saying, The lot doesn't perk. Okay?

So at such time as it can perk or is put into a septic system and therefore it's going to be usable

and not detrimental to the public interest, I think that the restriction can bend that.

What I was really looking for -- one of the reasons I was looking at these specific questions was it's hard to read this plat, the copy I've got and the multiple pages. Clearly, based upon the letter with the submission and the original submission it was not the intention of the Roper family to permanently restrict this property. So you don't have the grantor's intent to restrict the property and it's unlike the Carolina land case.

I don't think in this particular instance, the only thing binding them was the 20-foot strip of land which is now known as Roper Road. It guarantees the right of access to all those properties. So both -- based upon the Court's knowledge of how this came to be, why it came to be, the fact that Lot C-3 is, in fact, now built upon, and Mr. Terry moved to the nuisance thereafter in 2014, I think the part that hurts this case -- we can try this case if you'd like, but I don't see how it's going to be any different.

So I'm going to grant the Motion for Summary Judgment. Mr. Koutrakos, I'm going to ask that you prepare an order to that effect. Run that by

Mr. Rosen, and we'll go from there.

MR. KOUTRAKOS: Thank you, Your Honor. I appreciate it.

THE COURT: Thank you-all. Good luck to you-all out there. All right? Interesting case.

(The proceedings were concluded at 2:44 p.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of October, 2017 at Charleston, Charleston County, South Carolina.

_____
Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-1560

Carpenter Braselton, LLC,

Plaintiff,

vs.

Ashley Roberts; Jeremy Cook; and Salaheddine Ezzaoudi,

Defendants.

AMENDED AFFIDAVIT OF F. ELLIOTTE QUINN, III

PERSONALLY APPEARED BEFORE ME, F. Elliotte Quinn, III, who, first being duly sworn, deposes and says that:

1. I am a professional land surveyor licensed by the State of South Carolina since 1985.

2. I am employed by Thomas & Hutton in Mt. Pleasant, South Carolina. I am the Survey Group Leader at Thomas & Hutton.

3. In 1990, I prepared a plat of property entitled "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," which plat was recorded December 31, 1990, in the RMC Office for Charleston County in Plat Book CB at Page 130, a copy of which is attached hereto as Exhibit A ("the Plat"). By virtue of the foregoing, I have personal knowledge of the matters stated herein.

4. I prepared the Plat at the request of the heirs of James Roper. The purpose of preparing the Plat was to subdivide an 11.95-acre tract to create five lots, Lots C-1, C-2, C-3, C-4, and C-5, with a private road to access those lots.

5. Charleston County was required to approve the subdivision of the property into five lots.

6. As noted on the Plat, the Plat was approved by Charleston County on December 4, 1990.

7. As part of the approval process, Charleston County made various notations on the Plat.

8. Among other notations on the Plat made by Charleston County, the following notations were placed on the Plat by John Waring, an employee of Charleston County:

- THIS LOT MEETS CURRENT MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM (FOR LOT C-1 ONLY)
- THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES

9. These notations placed on the Plat by Charleston County were for the purpose of indicating that Charleston County would not, at that time, approve building permits for Lots C-2, C-3, C-4, and C-5 because those lots did not meet current minimum standards for a modified conventional sub-surface disposal system. Lot C-1 did meet the current minimum standards for a modified conventional disposal system, and that is why Charleston County did not say Lot C-1 was not to be used for building purposes.

10. These notations on the Plat were not requested to be placed on the Plat, and were not placed on the Plat, by or at the request of the heirs of James Roper. These notations on the Plat were not, and are not, restrictions from use placed on Lots C-2, C-3, C-4, and C-5 by the heirs of James Roper. The heirs of James Roper indicated to me they wanted the ability to build

residential homes on all five lots. Charleston County required that each lot be suitable for a septic system before issuing building permits. At that time, lots would not be suitable for a septic system if they did not "perk." At that time, Charleston County would not permit septic systems on four of the lots because four of the lots did not "perk." Apparently, at that time, Lot C-1 did perk, but the others did not. That is why Charleston County placed a different notation for Lot C-1 on the Plat.

11. These notations were simply placed on the Plat by Charleston County to warn buyers of issues related to sewer disposal services. Charleston County would not permit buildings to be placed on Lots C-2, C-3, C-4, and C-5 because, at that time, those lots did not meet the current minimum standards for a sewer disposal system, because those lots did not "perk."

12. This affidavit amends my previous affidavit due to scrivener's errors contained therein where I meant to say in numerous places "Lots C-2, C-3, C-4, and C-5" instead of "Lots C-1, C-2, C-3, and C-4." Also, in paragraph 10 I meant to say "Lot C-1" instead of "Lot C-5."

Further, affiant sayeth not.

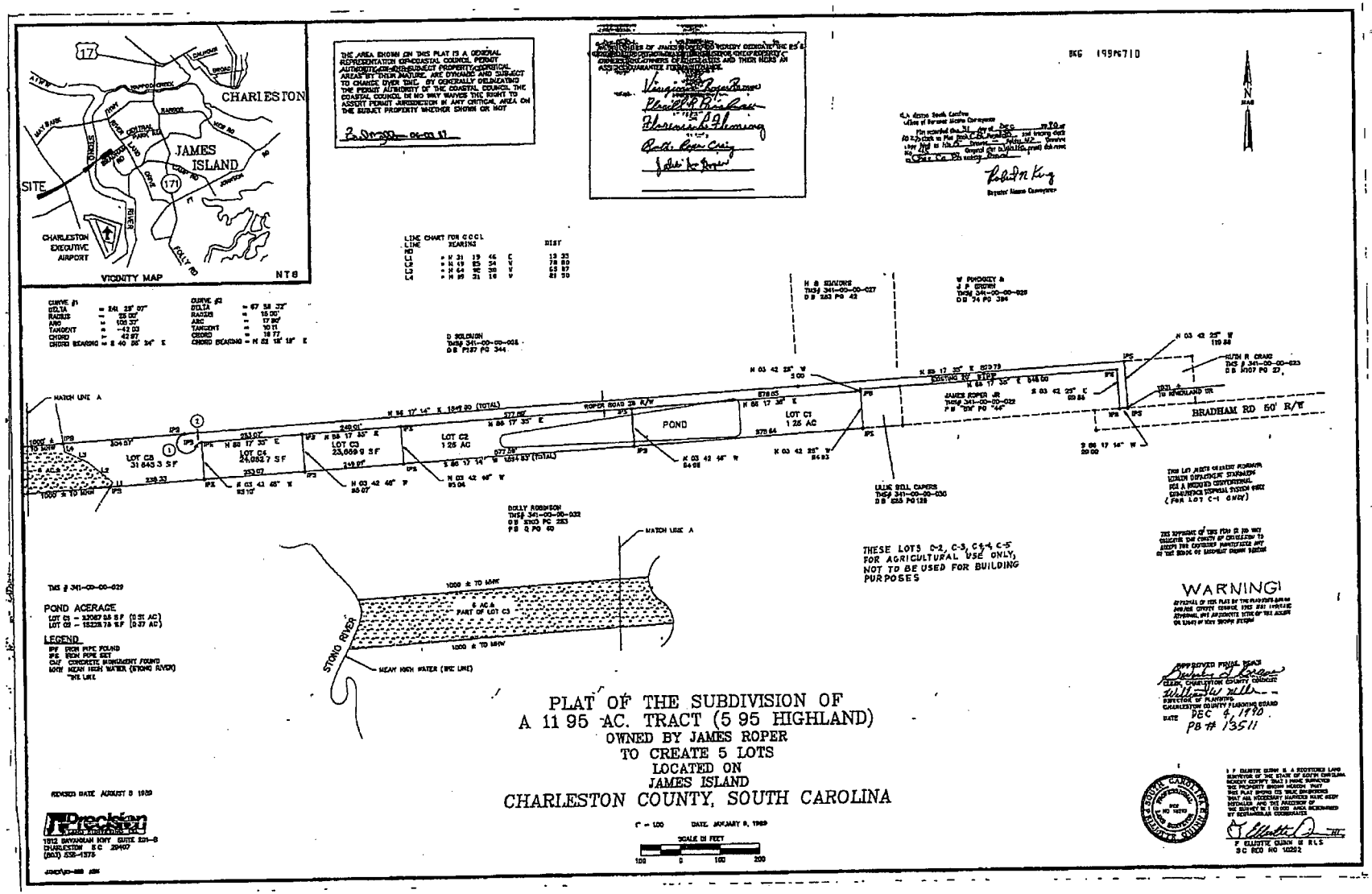
F. ELLIOTTE QUINN, III

Sworn and subscribed to before me this 17th day of July, 2017.

Notary Public for South Carolina
My Commission Expires: 4.2.2022

KEN E. NAGEL NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04/02/2022

EXHIBIT A


CHARLESTON
JAMES ISLAND
SITE
CHARLESTON EXECUTIVE AIRPORT
VICINITY MAP
NTS
THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF COASTAL COUNCIL PERMIT AUTHORITY. ON-SUBJECT PROPERTY CRITICAL AREAS BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERALLY DELINEATING THE PERMIT AUTHORITY OF THE COASTAL COUNCIL, THE COASTAL COUNCIL DOES NOT WAIVE ITS RIGHT TO ASSERT PERMIT JURISDICTION IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY WHETHER SHOWN OR NOT
BK6 199PG710
LINE CHART FOR CCCL
CURVE #1
CURVE #2
H B SIMMONS
THS# 341-00-00-027
D B 283 PG 42
W PHOCKEY &
J P STROM
THS# 341-00-00-029
D B 74 PG 384
D SOLOMON
THS# 341-00-00-006
D B P187 PG 344
N 03 42 25" W
119.88
RUTH R CRAIG
THS # 341-00-00-023
D B R107 PG 27
1831 A
TO NEWLAND DR
MATCH LINE A
N 86 17 14" E 1849.80 (TOTAL)
ROPER ROAD 28' R/W
POND
LOT C1
1.25 AC
878.65
878.64
JAMES ROPER JR
THS# 341-00-00-022
P B 0W PG "46"
BRADHAM RD 50' R/W
LOT C2
1.25 AC
LOT C3
23,609.9 SF
LOT C4
24,052.7 SF
LOT C5
31,845.3 SF
LILLIE BELL CAPERS
THS# 341-00-00-030
D B 655 PG 128
DOLLY ROBINSON
THS# 341-00-00-032
D B R243 PG 283
P B Q PG 60
THESE LOTS C-2, C-3, C-4, C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES
WARNING!
MATCH LINE A
1000 ± TO MHW
6 AC ±
PART OF LOT C3
STONO RIVER
MEAN HIGH WATER (MHW LINE)
TMS # 341-00-00-029
POND ACREAGE
LOT C3 = 23609.98 S.F. (0.54 AC)
LOT C4 = 15228.76 S.F. (0.37 AC)
LEGEND
IPF IRON PIPE FOUND
IPS IRON PIPE SET
CMF CONCRETE MONUMENT FOUND
MHW MEAN HIGH WATER (STONO RIVER)
"MHL LINE
PLAT OF THE SUBDIVISION OF
A 11 95 AC. TRACT (5 95 HIGHLAND)
OWNED BY JAMES ROPER
TO CREATE 5 LOTS
LOCATED ON
JAMES ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA
1" = 100'
DATE: JANUARY 9, 1989
SCALE IN FEET
100 0 100 200
REVISED DATE AUGUST 8 1989
Precision
1912 SAVANNAH HWY SUITE 201-B
CHARLESTON S C 29407
(803) 556-1375
DEC 9, 1990
PB # 13511
F ELLIOTTE QUINN III R L S
S C REG NO 10252

CB|130

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-1560

Carpenter Braselton, LLC,

Plaintiff,

vs.

Ashley Roberts; Jeremy Cook; and Salaheddine Ezzaoudi,

Defendants.

CERTIFICATE OF SERVICE

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson, LLC, do hereby certify that, on this date, I served the foregoing **Amended Affidavit of F. Elliotte Quinn, III** upon counsel of record, by depositing a copy of the same in the United States mail with proper first-class postage affixed thereon, addressed as follows:

John E. Rosen, Esquire
Rosen Rosen & Hagood, LLC
151 Meeting Street, Suite #400
P. O. Box 893
Charleston, SC 29402
(Attorneys for Plaintiff)

Kathleen S. Romero

July 25, 2017

1020.790\1026.031\COS-AmendAffidavit.Quinn

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agricultural

adjective | ag·ri·cul·tur·al | \ˌa-gri-ˈkəl-ch(ə-)rəl\

Popularity: Bottom 40% of words | Updated on: 17 Dec 2017

Examples: AGRICULTURAL in a Sentence

CITE

Definition of AGRICULTURAL

: of, relating to, used in, or concerned with agriculture

—**agriculturally** *adverb*

NEW! Time Traveler

First Known Use: 1776

SEE WORDS FROM THE SAME YEAR ›

See *agricultural* defined for English-language learners

See *agricultural* defined for kids

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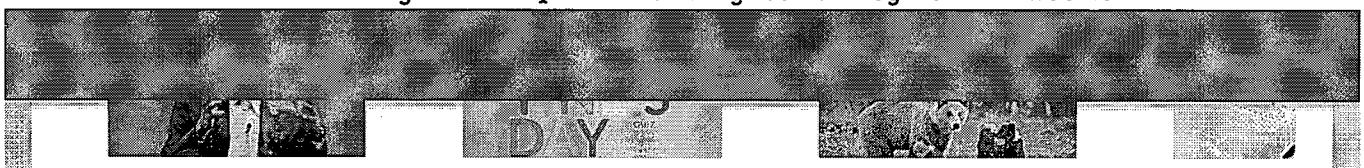
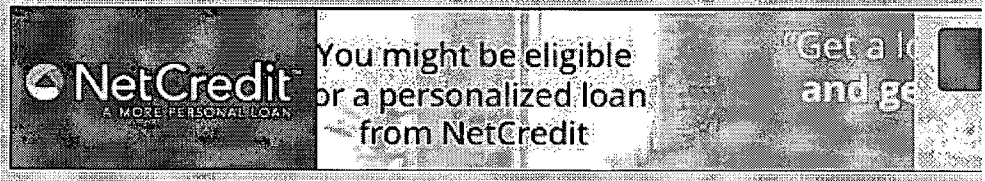


Examples of AGRICULTURAL in a Sentence

the state's main *agricultural* product

he grew up in an *agricultural* community and farming was still in his blood



Recent Examples of AGRICULTURAL from the Web

Its *agricultural* extraction, conducted by all-women local cooperatives, is an arduous process that requires patience and artisanal expertise.

— Jihane Hajby, *Allure*, "7 Moroccan Beauty Secrets You Need to Know," 29 Oct. 2017

But the star of this property, ensconced in a 400-acre *agricultural* estate on St. Kitts, is its sustainable food program.

— *Condé Nast Traveler*, "Belle Mont Farm on Kittitian Hill," 20 Oct. 2017

President Temer, who is deeply unpopular, has sought support from powerful *agricultural*, ranching and mining lobbies to push economic changes through Congress and shelter him from a corruption investigation

These example sentences are selected automatically from various online news sources to reflect current usage of the word 'agricultural.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. Send us feedback.

First Known Use of AGRICULTURAL

1776

SEE WORDS FROM THE SAME YEAR >

NEW! Time Traveler

AGRICULTURAL Synonyms

Synonyms
agrarian, farming

Antonyms

Other Agriculture/Gardening Terms

fallow, graft, heirloom, loam, potash, soilage, swath, tilth, windfall

AGRICULTURAL Defined for English Language Learners

agricultural

: of, relating to, or used in farming or agriculture

: engaged in or concerned with farming or agriculture

AGRICULTURAL Defined for Kids

agricultural

adjective | ag·ri·cul·tur·al | \ˌa-gri-ˈkəl-chə-rəl, -ˈkəlch-rəl\

Definition of AGRICULTURAL for Students

: relating to or used in farming or agriculture • *agricultural* land

Learn More about AGRICULTURAL

Thesaurus: All synonyms and antonyms for *agricultural*

Nglish: Translation of *agricultural* for Spanish speakers

Britannica English: Translation of *agricultural* for Arabic speakers

Seen and Heard

What made you want to look up *agricultural*? Please tell us where you read or heard it (including the quote, if possible).

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adust

scorched or burned

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1 sartorial
'of or relating to clothes'

2 whipsaw
'to beset or victimize in two opposite ways at once'

3 treason
'the crime of trying to overthrow your country's government'

4 redaction
'removing sensitive information'

5 spurious
'false' or 'of a deceitful nature'

SEE ALL >

BROWSE DICTIONARY

Agricola

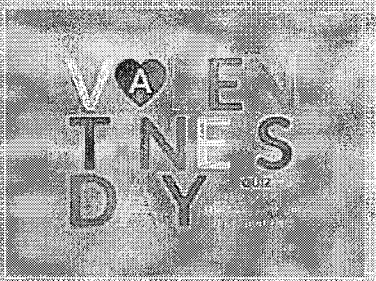
agricolite

agricultural agent

agricultural ant

TEST YOUR VOCABULARY

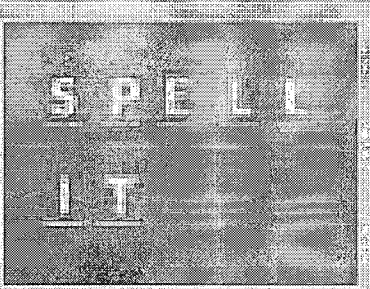
Valentine's Day Quiz



Which word used to mean **sweetheart** or **darling**?

philosopher | bully

creep | drip



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Seeming is sometimes believing

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The Difference Between 'Grizzly' and 'Grisly'

It has a gray area.

alt-5a7dc3c72e918

'One In The Same': An Eggcorn

Go with "one *and* the same"

image1760257654

2017 Word of the Year: Behind the Scenes

How we chose 'feminism'

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Words of the Year: 1066

Or, Why Pig Meat is Called 'Pork' and Cow Meat is Called 'Beef'

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Irregardless

It is in fact a real word (but that

WORD GAMES

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A quiz for lovers and haters

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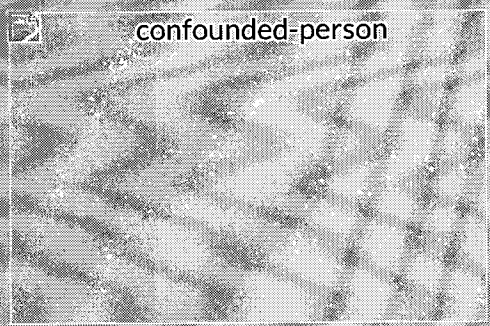

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1 only

adjective | on·ly | \ˈōn-lē\

Popularity: Bottom 50% of words | Updated on: 2 Feb 2018

Usage guide: Placement of ONLY in a Sentence

Examples: ONLY in a Sentence

CITE

Definition of ONLY

1 : unquestionably the best : PEERLESS • is convinced that his team is the *only* one

2 **a** : alone in a class or category : SOLE • the *only* one left • the *only* known species • She's the *only* person you can really trust.
b : having no brother or sister • an *only* child

3 : FEW • one of the *only* areas not yet explored • That was one of the *only* times I saw him cry.

See *only* defined for English-language learners

See *only* defined for kids

Explore Merriam-Webster

The Difference Between 'Grizzly' and

How Perceptive of You, Part 2: More

Trending: Obama: Different 'Sartorial'

Valentine

Examples of ONLY in a Sentence

the *only* way to really appreciate the beauty of the forest is to walk through it

that is the *only* possible right answer

Recent Examples of ONLY from the Web

Cherry serves as the first and *only* female veteran on the security staff.

— Brittany Britto, *Washington Post*, "MCVET offers shelter, services to the oft-overlooked: homeless female veterans," 25 Dec. 2017

Hungarian grandmaster Judit Polgar was the first and *only* woman to break the top 10 on the ratings list during her career.

— Katy Scott, *CNN*, "Top female grandmaster takes on man's world of chess," 22 Dec. 2017

Rockford's markers may have been the *only* ones made of stone.

These example sentences are selected automatically from various online news sources to reflect current usage of the word 'only.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. Send us feedback.

Origin and Etymology of ONLY

Middle English, from Old English *ānlīc*, from *ān* one — more at ONE

ONLY Synonyms

Synonyms
incomparable, inimitable, matchless, nonpareil, peerless, unequaled (*or* unequalled), unexampled, unmatched, unparalleled, unrivaled (*or* unrivalled), unsurpassable, unsurpassed, out of sight

2 only

adverb

Definition of ONLY

1 **a** : as a single fact or instance and nothing more or different : MERELY
- has *only* lost one election —George Orwell

b : SOLELY, EXCLUSIVELY • known *only* to him

2 : at the very least • it was *only* too true

3 **a** : in the final outc

4 **a** : as recently as : not before • *only* last week • *only* in the last year did she get recognition

b : in the immediate past • *only* just talked to her

See *only* defined for English-language learners

Placement of ONLY in a Sentence

The placement of *only* in a sentence has been a source of studious commentary since the 18th century, most of it intended to prove by force of argument that prevailing standard usage is wrong. After 200 years of preachment the following observations may be made: the position of *only* in standard spoken English is not fixed, since ambiguity is avoided through sentence stress; in casual prose that keeps close to the rhythms of speech *only* is often placed where it would be in speech; and in edited and more formal prose *only* tends to be placed immediately before the word or words it modifies.

Examples of ONLY in a Sentence

She had been there *only* twice in her life.

There are *only* two more weeks until summer vacation.

It's *only* a matter of time before someone gets hurt.

Do you really have to leave? It's *only* eight o'clock.

He was *only* a baby when his father died.

Leave her alone. She's *only* a kid.

The building is *only* about 10 years old.

It was quiet in the room

The club is for women *only*.

Recent Examples of ONLY from the Web

And with a 33 percent gain over the past three trading sessions, the company is now outpacing the Nasdaq's performance in 2017 by a factor of more than 3-to-1 — and it's *only* been public for half of that time.

— *Fortune*, "Warren Buffett's Grandnephew Skirts Comparisons and Beats the Market Anyway," 27 Dec. 2017

Athleta is having an 20 percent off sale today *only*, with code EXTRA20.

— Leora Herman, *The Cut*, "All the Best After-Christmas Sales," 26 Dec. 2017

Getting ahead of the game can require a little extra digging, but the payoff of discovering cool brands before everyone else does is worth it, if *only* for the bragging rights.

— Amy Hou, *Glamour*, "The 17 Best New Clothing Brands We Discovered in 2017," 26 Dec. 2017

These example sentences are selected automatically from various online news sources to reflect current usage of the word 'only.' Views expressed in the examples do not represent the opinion of Merriam-Webster or its editors. Send us feedback.

Origin and Etymology of ONLY

see [1]ONLY

ONLY Synonyms

Synonyms

Antonyms

3 only

conjunction

Definition of ONLY

1 **a** : with the restriction that : BUT • you may go, *only* come back early
b : and yet : HOWEVER • they look very nice, *only* we can't use them

2 : were it not that : EXCEPT
• I'd introduce you to her, *only* you'd win her —Jack London

---

See *only* defined for English-language learners

Examples of ONLY in a Sentence

I'd love to sing along, *only* I don't know the words.

They did have a radio, *only* it was broken.

We wanted to buy that painting, *only* it was far too expensive.

First Known Use of ONLY

14th century

ONLY Synonyms

Synonyms

ONLY Defined for English Language Learners

only

adjective

Definition of ONLY for English Language Learners

: alone in a class or category : existing with no other or others of the same kind

only

adverb

Definition of ONLY for English Language Learners

: no more than

: nothing other than

: excluding all others : nobody or nothing except

ONLY Defined for Kids

1 only

adjective | on·ly | \ˈōn-lē\

Definition of ONLY for Students

1 : alone in or of a cl or.

2 only

adverb

Definition of ONLY for Students

1 : no more than • We lost *only* one game.

2 : no one or nothing other than • *Only* you know my secret. • There may be other methods, but *only* this will do.

3 : in no other situation, time, place, or condition except • Use medicine *only* when necessary.

4 : in the end • It will *only* make you sick.

5 : as recently as • I saw him *only* last week.

3 only

conjunction

Definition of ONLY for Students

: except that • I'd like to play, *only* I'm too tired.

Learn More about ONLY

See words that rhyme with *only*

Thesaurus: All synonyms and antonyms for *only*

Spanish Central: Translation of *only*

Nglish: Translation of *o*

Britannica English: Tra

Seen and Heard

What made you want to look up *only*? Please tell us where you read or heard it (including the quote, if possible).

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WORD OF THE DAY

adust

scorched or burned

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TRENDING NOW

1 sartorial
'of or relating to clothes'

2 whipsaw
'to beset or victimize in two opposite ways at once'

3 treason
'the crime of trying to

5 spurious
'false' or 'of a deceitful nature'

SEE ALL >

BROWSE DICTIONARY

on loan
onlooker
only
only child
only fair

TEST YOUR VOCABULARY

Valentine's Day Quiz

Which word used to mean **sweetheart** or **darling**?

drip | philosopher
bully | creep

Can you spell these 10 commonly misspelled words?
TAKE THE QUIZ >

Test Your Knowledge - and learn some interesting things along the way.
TAKE THE QUIZ >

How Perceptive of You, Part 2: More Words About Perception

Seeming is sometimes believing

alt-5a7e04b13e521

The Difference Between 'Grizzly' and 'Grisly'

It has a gray area.

alt-5a7dc3c72e918

'One In The Same': An Eggcorn

Go with "one *and* the same"

image1760257654

2017 Word of the Year: Behind the Scenes

How we chose 'feminism'

video-title-words-of-the-year-1066

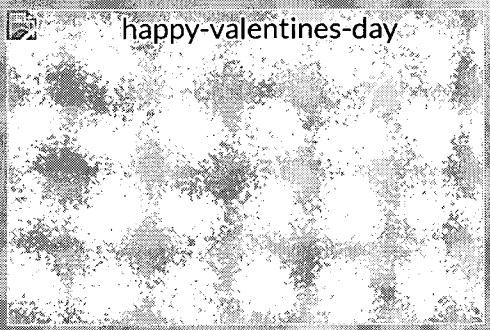
Words of the Year: 1066

Or, Why Pig Meat is Called 'Pork' and Cow Meat is Called 'Beef'

video-irregardless-grammar-peeve-blend-of-the-synonyms-irrespective-and-regardless

Irregardless

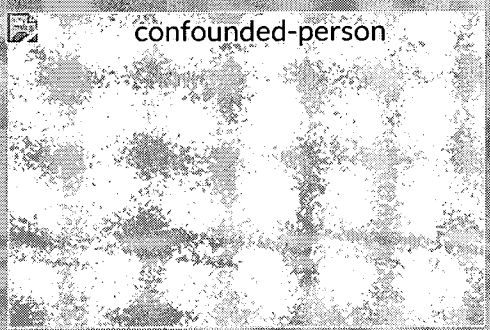
WORD GAMES



Valentine's Day Quiz

A quiz for lovers and haters

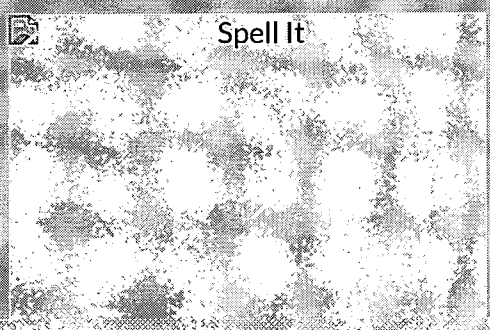
TAKE THE QUIZ >



Advanced Vocabulary Quiz

Tough words and tougher competition.

TAKE THE QUIZ >



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-1560
Appellate Case No. 2017-002546

CARPENTER BRASELTON, LLC, ... Appellant,

vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

CERTIFICATE OF COUNSEL

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

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