

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Unpublished Opinion No.: 2018-UP-211
(S.C. Ct. App. Filed May 16, 2018)

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S.C. SUPREME COURT

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

Roy Drasites and Elizabeth Drasites Petitioners.

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Hamilton Duncan, Individually)
and Hamilton Duncan, as Personal)
Representative of the Estate of)
Christine A. Duncan)

C/A No.: 2013-CP-40-5740

Plaintiff,)

ORDER

vs.)

Roy Drasites and)
Elizabeth Drasites,)

Defendants.)

The above-captioned matter was referred to the undersigned as Master-in-Equity for Richland County by Order of Reference executed by the Honorable L. Casey Manning dated December 2, 2013. Michael W. Tighe, Esquire and W. Taylor Stanley, Esquire represent the Plaintiff and James Randall Davis, Esquire represents the Defendants.

PROCEDURAL HISTORY

Plaintiff, Hamilton Duncan, filed his Summons and Complaint on September 23, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan was added as a Plaintiff in this action. Also by Consent Order dated June, 19, 2014, Plaintiff was granted leave to amend his Complaint. In his Amended Complaint, Plaintiff seeks an injunction enjoining the Defendants and their agents from obstructing or otherwise interfering with the Plaintiff's right-of-way easement and from unreasonably discouraging prospective buyers; and to dismantle and remove rip rap, water pipe(s) and other obstructions blocking Plaintiffs' right-of-way easement. Plaintiff also seeks an Order declaring (a) that the Easement extends to the edge of Defendant's Property; (B) that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle

towing a water craft and enable Plaintiff to launch the water craft from the Easement. In their Answer, Defendants admit the existence and origin of the Easement. Further answering the Defendants' allege that the termination point of the Easement is the location point described in said easement as it was on execution date of the easement grant (July 28, 1976) and that with an express easement, Plaintiff cannot unilaterally expand or change the specific provisions in the easement.

A merits hearing was held on this matter on April 28, 2015. Appearing at the merits hearing were the attorneys of record, Defendant Roy Drasites, Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program representative, Carl W. Bostick, Dennis G. Johns, and Larry W. Smith, all three of which are South Carolina registered land surveyors.

In the hearing the parties had on this matter on October 16, 2014, the parties presented the issue in this case to the Court as: What is the location in 1976 of the 360' contour point referred in the easement that Plaintiff obtained in his deed into him in 2002.

Based upon the testimony of the witnesses, documentary evidence filed in this matter, a personal visit to the easement site, and the arguments of counsel, I make the following findings of fact and conclusions of law:

CHRONOLOGICAL FINDINGS OF FACT

1. Plaintiff, Hamilton Duncan, Individually and as Personal Representative of the Estate of Christine A. Duncan is a citizen and resident of the State of West Virginia, County of Kanawha.
2. Defendants Roy Drasites and Elizabeth Drasites are citizens and residents of the State of South Carolina, County of Richland.

3. Year 2002 - By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Plaintiff and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, South Carolina 29036, more particularly described as follows (the "Duncan Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

The Court will hereafter refer to this conveyance as "Plaintiff's deed and easement".

4. Christine A. Duncan passed away as a citizen and resident of the State of South Carolina, County of Richland. Plaintiff Hamilton Duncan has been appointed Personal Representative of the Estate of Christine A. Duncan.

5. By deed dated March 17, 2014, recorded in the Office of the Register of Deeds for Richland County on April 1, 2014, in Book 1936 at Page 1081, and corrective deed dated September 24, 2014, recorded in the Office of the Register of Deeds for Richland County

on October 2, 2014, in Book 11431 at Page 18, Plaintiff Hamilton Duncan, individually purported to conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

6. Year 1976 - The origin of the easement at dispute in this case is deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 150 (the "Easement Deed"), wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case a non-exclusive right of ingress and egress over a twenty (20') foot strip of land. The Easement Grant reads as follows:

"A non-exclusive right of ingress and egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360' degrees contour of Lake Murray."

7. Plaintiff is a subsequent grantee of the easement in issue.

8. The plats referred to in Plaintiff's deed and easement are not referenced or incorporated in the original easement grant set forth in paragraph 6. Furthermore, the said plat references are for plats prepared in 1988 and 1995 and the easement grant is July 28, 1976.

9. The specific easement description set forth in quotes in paragraph 6 is provided for in the deeds in the Plaintiff's chain-of-title but the specific easement description in those deeds does not incorporate or reference a plat or any other written document showing the location of the 360' contour which is referred to in the easement description in paragraph 6 of this Order.

10. The April 25, 1988 survey by Site Consultants, Inc. (*see Defendants' Exhibit 9*) that is referenced in Plaintiff's deed and easement does not reference, under its "notes" on the face of the plat, how it determined the distance of Plaintiff's easement, the location of the 360' contour, or the waters of Lake Murray on said plat.

11. Year 1981 - The plats that are referenced in Plaintiff's deed and easement are dated April 25, 1988 by Site Consultants, Inc. and plat by Hussey, et al. dated December 13, 1995. The earliest plat describing the easement in issue is the plat of Wood Trail Subdivision (earlier name of Plaintiff's and Defendants' subdivision) (*See Defendants' Exhibit 13*) prepared by Civil Engineering of Columbia dated May 14, 1981 (some 5 years after the easement execution on July 28, 1976) and said plat does not show the easement in issue terminating at the waters of Lake Murray but terminates at the edge of a road that ran along the boundary of the Defendants' property and shows the waters of Lake Murray beyond the easement termination point as well as beyond the road.

12. The Wood Trail plat shows the Plaintiff's deed and easement and the easement in the Wood Trail plat has the same distances and width for said easement as the Site Consultants, Inc. plat.

13. Year 1995 - By deed dated August 11, 1995, recorded August 14, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1273 at Page 242, Silver Pointe Cove Associates, Inc. conveyed a fee simple interest in 1310 Silver Point Road, Chapin, South Carolina to Roy R. Drasites and Elizabeth P. Drasites, Defendants herein, (*See Defendants' Exhibit 15*) more particularly described as follows (the "Drasites Property"):

ALL THAT CERTAIN PIECE, PARCEL, OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April, 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

The plats referenced in this legal description do not specifically denote the location of the 360' contour on the Defendants' property (*See Defendants' Exhibit 17*).

This plat shows the Plaintiff's easement bordering the southeastern side of Defendant's property.

14. Year 1995 - The plat referenced in the deed into the Defendants as "prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995..." was recorded on August 14, 1995 in the Register of Deeds for Richland County in Plat Book 55 at Page 9030 (*See Defendants' Exhibit 17*).

15. Year 1997 - Carl W. Bostick prepared a plat for the Defendants dated December 15, 1997 (*see Defendants' Exhibit 16*) showing the location of the 360' contour on the Defendants' property.

16. Year 1998 - The Defendants and a neighbor (Bullocks), in 1998, obtained a Lake Murray permit for excavation of the cove of Lake Murray in front of their lots and the establishment of a dock. The application was approved December 4, 1998. The approval allowed for the establishment by the Defendants and Bullock of a retaining wall on their property at the 360' contour of Lake Murray. Said wall was established by the Defendants and Bullock. The permit allows for excavation only below the 360' contour of Lake Murray.

17. Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program, testified that SCE&G regulates the permitting, upgrading and maintaining structures and facilities below the 360' contour of Lake Murray pursuant to directives of the Federal Energy Regulatory Commission and SCE&G had implemented a written management program policy in January 1975, prior in time to the creation of the easement in issue.

18. Mr. Boozer testified that on June 18, 2014, the Plaintiff made application to the Lake Murray Management department to obtain permission to "grade existing soil on easement to remove undulations that prevent the easement from being used for its purpose for launching boats" (*See Defendants' Exhibit 10*). By letter dated June 30, 2014, Mr. Boozer indicated to Plaintiff's representative does not have a permit that allows grading the soil or dirt along the shoreline below the 360' contour nor will it allow docks or boat ramps to be constructed on the twenty (20) foot easement (*See Defendants' Exhibit 1*).

19. Mr. Boozer testified that his opinion was that the 360' contour on the Drasites property and the Plaintiff's easement crossing the Drasites property was located at the point shown on the Carl W. Bostick survey dated February 3, 2014, which location is where the retaining wall, allowed by the SCE&G excavation permit, is located.

20. Surveyor Bostick has prepared surveys for the Defendants since 1995, including the December 1997 360' contour plat and indicated that the 360' contour location on the Drasites property is where the retaining wall is located and is shown on the Bostick plat dated February 3, 2014 (*See Defendants' Exhibit 14*).

21. Dennis G. Johns, a South Carolina registered land surveyor, was retained by the Plaintiff and prepared a plat for the Plaintiff on January 13, 2013, with revisions on March 12, 2014, and surveyor Johns' opinion, the 360' contour point was located at a point 155.43 feet commencing from at the edge of the Plaintiff's deed lot and easement in issue, as shown on said plat revision dated March 12, 2014 (*See Defendants' Exhibit 12*). Surveyor Johns did locate on his plat a retaining wall in the same location as the Bostick plat and put a reference point iron located 24.06 feet from the 360' contour on said plat and the reference point iron

was located on the center line of the SCE&G power line easement which is shown on the Woodtrail (*See Defendants' Exhibit 13*) plat in the same location as the Johns plat.

22. Larry W. Smith, a South Carolina registered land surveyor, testified for the Plaintiff. Surveyor Smith did not prepare any independent surveys but based on documents provided to him, his opinion was that the 360' contour point was located in the same location as Surveyor Johns testified it was located.

23. Plaintiff nor any other independent witness presented live testimony or documentary evidence proving that he had used his easement for accessing the easement with a boat or launching the boat from the easement to the waters of Lake Murray.

24. Plaintiff nor any other independent witness testified for the Plaintiff as to any obstruction or interference with the easement in issue by the Defendants.

LAW ANALYSIS

1. An "easement" is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578.

2. As a general rule, to constitute a grant of an easement, any words clearly showing the intention to grant an easement are sufficient. 25 Am.Jur.2d. *Easement and Licenses* §15, at 512 (2004). "Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention." *Smith c. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 441 S.E.2d 331, 335 (Ct. Appl 1994).

3. "If the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction which the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect." 25 Am.Jur.2d *Easements* §18, at 516 (2004). Cited as *Ten Woodruff Oaks, LLC v. Point Development, LLC*, 385 S.C. 174, 638 S.E.2d 510.

4. If there is any ambiguity in an easement, the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the easement. The reason for the rule of strict construction against the party preparing the easement is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the easement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423.

5. Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

6. A plat which is not referenced or incorporated into an easement description is not made a part of the legal dimensions described in the plat. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

CONCLUSIONS OF LAW

The Court finds and concludes that an ambiguity exists in the language in the easement as to the specific purpose of the easement.

Although the easement states that it is to be used for ingress and egress, but it does not specify the specific purpose of the ingress and egress. It does not state lake access, access to an adjoining road or any specific purpose. The easement grant in 1976 does not incorporate or reference any plat to give this Court any guidance as to the specific intent use or purpose of this easement. For the reasons stated, the Court finds that the evidence outside the "four corners" of the easement has to be utilized to determine the location of the terminus point of the easement.

Plaintiff supports his position that the 360' contour point in the 1976 easement ends where the Defendants' property ends as shown on the Site Consultants plat as well as the Defendants' deed and plat for the their property. The reasons sited to support this area as follows: Plaintiff has two plats in its chain-of-title showing the easement in issue dated 1988 and 1995 some twelve (12) to nineteen (19) years after the easement was granted in 1976. However, these plats were obviously not in existence at the time of the easement creation.

Surveyors Larry W. Smith and Dennis G. Johns both testified that the Plaintiff's easement had a distance of one hundred fifty-five (155') feet more or less, as shown by the Site Consultant plat and the plat that is referenced in the Defendants' deed. It is their opinion that distance (155' more or less) brings the easement to the waters of Lake Murray. However, the difficulty with that position is that the most recent plat prepared after the 1976 easement (the Woodtrail plat in 1981) shows that Surveyors Smith and Johns termination point was contiguous to a road shown on the 1981 Woodtrail plat and said plat shows the waters of Lake Murray on the far side of said road away from the easement. The Woodtrail plat defeats the Plaintiff's argument that the easement was for access to Lake Murray.

The more credible evidence that the termination point of the easement in issue is the retaining wall location shown on the Bostick survey dated February 3, 2014, which is not at the

edge of the water as shown on plat. This retaining wall was established in 1998 and 1999 on the 360' contour as required by the SCE&G excavation permit. Tommy C. Boozer testified that it was his belief this was the 360' contour point. Surveyor Bostick has prepared plats on the Defendants' property, including the 1997 topographical plat which showed the 360' contour where the retaining wall is located on the Bostick survey of February 3, 2014. The Court notes on the surveyor Johns plat of 2014 that a retaining wall is some 24' feet shorter than the distance claimed as an easement by the Plaintiff. The Court also notes that there has been an SCE&G transmission line that is shown on the Site Consultants plat as well as the Woodtrail plat and the Defendants' deed plat which shows the centerline of said transmission line crossing in the same location as the retaining wall. The outer edge of this easement, based on the plat referred to herein show that the outer edge of this power line was contiguous to the road that is shown on the Woodtrail plat of 1981. This would further confirm that the Plaintiff's easement did not provide access to the waters of Lake Murray.

Further complicating the Plaintiff's position is that because he only has a twenty (20') foot wide easement and he cannot secure permission from SCE&G to add a boat dock, boat ramp or even any permit to create a passable entry of any proposed boat into Lake Murray from the termination point of the easement.

For the above reasons, the Court find that the preponderance of the evidence is that that the intent of the easement was not to provide access to Lake Murray and that the proper termination point of the Plaintiff's easement is the location of the 360' contour is the Bostick survey of February 3, 2014.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, since there was no testimony from the Plaintiff as to any obstruction by the Defendants, the Court finds that there is no evidence before the Court to grant any relief to the Plaintiff on this request.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the preponderance of the evidence is that the easement did not provide access to Lake Murray and that the 360' contour point reference on February 3, 1014 Bostick plat is the 360' contour point referenced in the 1976 easement issued.

AND IT IS SO ORDERED.

The Honorable Joseph M. Strickland
Master-in-Equity, Richland County

May _____, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Hamilton Duncan, Individually)
and Hamilton Duncan, as Personal)
Representative of the Estate of)
Christine A. Duncan)

C/A No.: 2013-CP-40-5740

Plaintiff,)

vs.)

Roy Drasites and)
Elizabeth Drasites,)

Defendants.)

ORDER
(ending action)
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SC Court of Appeals

2015 JUL 23 11:10-03
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C.C.P. & G.S.
RICHLAND COUNTY
FILED

The above-captioned matter was referred to the undersigned as Master-in-Equity for Richland County by Order of Reference executed by the Honorable L. Casey Manning. A final hearing was held on April 28, 2015. Present at the hearing were Michael W. Tighe, Esquire and W. Taylor Stanley, Esquire for the Plaintiff; James Randall Davis, Esquire for the Defendants; and Defendant Roy Drasites. Also present and testifying were surveyors Dennis Johns, Larry Smith, and Carl Bostick (collectively, the "Surveyors"); and Tommy Boozer of SCE&G Lake Management.

PROCEDURAL HISTORY

Plaintiff, Hamilton Duncan, filed his Summons and Complaint on September 23, 2013. This matter was referred to the undersigned as Master-in-Equity by Order of Reference dated December 9, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan was added as a Plaintiff in this action. Also by Consent Order dated June, 19, 2014, Plaintiff was granted leave to amend his Complaint. In his Amended Complaint, Plaintiff seeks an injunction enjoining the Defendants and their agents from obstructing or otherwise interfering with the Plaintiff's right-of-way easement and from

unreasonably discouraging prospective buyers; and to dismantle and remove rip rap, water pipe(s) and other obstructions blocking Plaintiffs' right-of-way easement. Plaintiff also seeks an Order declaring (a) that the Easement extends to the edge of Defendants' Property; (B) that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a water craft and enable Plaintiff to launch the water craft from the Easement.

The parties agree that the Easement Deed (as hereafter defined) is an express grant of an easement across the Defendants' property. It is the Plaintiff's contention that the easement at issue is for the purpose of ingress, egress and access to Lake Murray, as is mentioned in the grant of the easement itself and that the easement may be used by vehicle towing light watercraft. Contrary to this, it is the Defendants' position that either (i) the easement does not run the entire length of the Defendants' southwest property line, leaving some portion of the Defendants' property free from the burden of the easement, which would prevent Plaintiff from reaching the lake without trespassing on Defendants' Property, or (ii) in the alternative, that the purpose of the easement was to gain access to a dirt road shown on a plat of Woodtrail Subdivision which road allegedly connected to Johnson Marina Road. For the reasons set forth herein, I find the Defendants' contentions unpersuasive, and find Plaintiff has met his burden of proof.

At a hearing of this matter on October 16, 2014, the parties agreed to the appointment of a third surveyor (in addition to the one each party had previously retained). The results of the third party surveyor to be binding upon the parties with regard to the extent of the Easement. Thereafter, the Court found the results of the surveyor panel inconclusive and required a hearing on this matter.

To the extent necessary, Findings of Fact shall be deemed Conclusions of Law and Conclusions of Law shall be deemed Findings of Fact. Based upon the pleadings, motions, arguments of counsel, testimony and evidence in the case, I find the following:

FINDINGS OF FACT

1. Plaintiff, Hamilton Duncan, Individually and as Personal Representative of the Estate of Christine A. Duncan is a citizen and resident of the State of West Virginia, County of Kanawha.

2. Defendants Roy Drasites and Elizabeth Drasites are citizens and resident of the State of South Carolina, County of Richland.

3. By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Plaintiff and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, South Carolina 29036, more particularly described as follows (the "Duncan Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in

Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

4. The reference in the deed recorded in Book 680 at Page 383 contains a scrivener's error, and should read as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at Page 150, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

5. Christine A. Duncan passed away a citizen and resident of the State of South Carolina, County of Richland. Plaintiff Hamilton Duncan has been appointed Personal Representative of the Estate of Christine A. Duncan.

6. By deed dated March 17, 2014, recorded in the Office of the Register of Deeds for Richland County on April 1, 2014, in Book 1936 at Page 1081, and corrective deed dated

September 24, 2014, recorded in the Office of the Register of Deeds for Richland County on October 2, 2014, in Book 11431 at Page 18, Plaintiff Hamilton Duncan, individually conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

7. The origin of the easement at dispute in this case is deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 150 (the "Easement Deed"), wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case a "non-exclusive Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" [the Drasites Property] and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray" (the "Easement").

8. The Easement Deed contains a scrivener's error and was intended by the parties to read "non-exclusive Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360-foot contour of Lake Murray."

9. The Easement has been included in each and every deed conveying the Duncan Property, including the deed to the Plaintiff.

10. By deed dated August 11, 1995, recorded August 14, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1273 at Page 242, Silver Pointe Cove Associates, Inc. conveyed a fee simple interest in 1310 Silver Point Road, Chapin, South Carolina to Roy R. Drasites and Elizabeth P. Drasites, Defendants herein, more particularly described as follows (the "Drasites Property"):

ALL THAT CERTAIN PIECE, PARCEL, OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove subdivision, by CTH Surveyors, Inc., dated April 3,

1995, revised April 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

11. Both surveys referred to in the deed to the Defendants show the Easement running along the entire southeastern property line of the Drasites Property.

12. By deed dated October 28, 1960, and recorded in the Office of the Register of Deeds for Richland County on May 1, 1963 in Book 354 at Page 554 (the "SCE&G Deed"), South Carolina Electric & Gas Company conveyed what is commonly known as the fringe lands to Betty A. Thompson, a predecessor in title to the Defendants. "Fringe lands" means any property acquired for Lake Murray, but found to be above the 360-foot contour; in this case, it was deeded to the landowner bordering Lake Murray, one of the parties' predecessors in title.

13. The SCE&G deed specifically references the 360-foot contour, as it then existed, as the property line of the fringe lands therein conveyed. Therefore, the 360-foot contour was also the property line of the Drasites Property at the time of its conveyance to the Drasites.

14. The cove upon which the Drasites Property and Easement are situate was excavated during the period of the Defendants' ownership of the Drasites Property. This excavation, along with erosion changed the location of the 360-foot contour on the Drasites Property and Easement so that, at the time of the litigation, the 360-foot contour was located where the Drasites' sea wall was placed.

15. During the excavation, the iron pipes referenced in the SCE&G Deed were removed.

16. With the exception of one plat (a plat prepared for the Defendants for the instant litigation by Mr. Bostick), each and every plat in the record in both the Plaintiff's and Defendants' chains of title shows the Easement extending to the edge of the Drasites Property line.

17. The plat referenced in the deed into the Defendants as "prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995..." was recorded on August 14, 1995 in the Register of Deeds for Richland County in Plat Book 55 at Page 9030. The deed into the Defendants also references another plat, which also shows the Easement extending to the edge of the Drasites Property line.

18. The subdivision plat prepared for R.J. Marsh, Inc., dated July 2, 1981 and recorded in the Office of the Register of Deeds in Plat Book 53 at Page 0170 (the "Woodtrail Subdivision Plat") shows the Easement extending to the edge of the Drasites Property. The Woodtrail Subdivision Plat, however shows the end of the Easement near an alleged dirt road leading to Johnson Marina Road.

19. As testified at hearing, the Woodtrail Subdivision was never developed as shown on the Woodtrail Subdivision Plat. The land depicted is not configured as reflected thereon. In short, the Woodtrail Subdivision has never been brought to fruition.

20. Defendants assert that the purpose of the Easement is to reach an alleged dirt road beyond the Drasites Property. In making this argument, Defendants have essentially admitted that the Easement extends to the edge of the Drasites Property's boundary line and that it was for use by vehicles. However, as Mr. Tommy Boozer testified, because the alleged road would be below the 360-foot contour, no one could have used the road as of the date of the easement because it would have been within the lake borders. Based upon the evidence and testimony in

the record, and upon my view of the Easement, Drasites Property and Duncan Property, I find and conclude that no road existed in 1976, for which the Easement could provide ingress, egress and access.

21. Therefore, I find and conclude that purpose of the Easement was and is for access to Lake Murray, not for access to an alleged dirt road which connected to Johnson Marina Road, as alleged by the Defendants.

CONCLUSIONS OF LAW

1. While the determination of the existence of an easement is a question of fact in a law action, the question of the extent of an easement is an action in equity. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008). An easement is a right which one person has to use the land of another for a specific purpose. *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012).

2. The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it. *Smith*, 312 S.C. at 467, 441 S.E.2d at 336. "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance." *Rhett*, 401 S.C. at 492, 736 S.E.2d at 881. An easement runs with the land of the dominant estate although a conveyance of the dominant estate does not expressly mention it. *Id.*

The Easement Deed creates an easement for the benefit of the Duncan Property. The Easement therein created has one terminus on the Duncan Property as shown on the plats in evidence, and, as stated in the grant, the Easement exists "extending from the property line of Jay

Clark Case (grantee) to the 360° degree [foot] contour of Lake Murray.” The Easement concerns the property and is essentially necessary for the enjoyment of the Duncan Property, specifically to access Lake Murray. I therefore find and conclude the Easement is an easement appurtenant; the Duncan Property is the dominant estate and the Drasites Property is the servient estate.

3. Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention. *Smith v. Commissioners of Public Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct. App. 1994). A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Rhett v. Gray*, 401 S.C. 478, 490, 736 S.E.2d 873, 879 (Ct. App. 2012). Both deeds and easements are valid to subsequent purchasers when they are recorded. *See Murrells Inlet Corp.*, 378 S.C. at 232, 662 S.E.2d at 455.

At one time, all three of the Surveyors determined the Easement reached the boundary of the Drasites Property with Lake Murray. The easement itself mentions Lake Murray, and does not reference any road. As reflected by the evidence and testimony in the record, as well as by the reference to Lake Murray in the Easement Deed itself, at the time the Easement was granted, Lake Murray was in existence. The evidence in the record, the testimony, and the language of the Easement Deed itself, all lead me to find and conclude that the purpose of the Easement is and was to access Lake Murray and burdens the entire length of the Drasites Property from the Duncan Property to the original boundary of the Drasites Property with Lake Murray.

4. Where a deed describes land as shown on a certain plat, such becomes part of the deed. *Murrells Inlet Corp.*, 378 S.C. at 232, 662 S.E.2d at 455. Recordation of a plat containing

an easement is sufficient to show that the owner intended to dedicate that easement. *See Id.* at 234, 662 S.E.2d at 456.

With the exception of the Bostick plat prepared for this litigation, the plats in evidence all show and delineate the Easement as extending from the Duncan Property to the property line of the Drasites Property with Lake Murray. Specifically, the Defendants took title to the Drasites Property with reference to a plat showing the Easement extending to the edge of the Drasites Property and thereafter recorded plats showing the Easement extending to the edge of the Drasites Property. The Defendants' own surveyor, Mr. Bostick has shown the Easement running all the way to the end of the Drasites Property line in at least two surveys. It was not until this litigation occurred that Mr. Bostick prepared a survey for the purpose of showing the Defendants' contentions which shows the Easement stopping short of the Drasites Property line. Prior to the current dispute, the Defendants never objected to or interfered with the use of the Easement by the owners of the Duncan Property. I find that based on the plats and evidence in the record, the equities require me to find that the Easement extends to the edge of the Drasites Property line.

5. The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. *Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545, 549 (1943). "The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated." *Id.* The owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new

and additional burden. *Rhett*, 401 S.C. at 493, 736 S.E.2d at 881. "Although to the extent of the easement, the rights of the easement owner are paramount to those of the landowner, the easement owner's rights are not absolute but are limited, so the owners of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more." *Id.*

The Easement was granted by deed dated July 28, 1976 and recorded August 3, 1976 in the Register of Deeds for Richland County in Deed Book D393 at Page 150. Lake Murray was in existence as of the date of the Easement Deed, as reflected by the reference to Lake Murray in the Easement Deed, as well as by testimony in the record. The Easement, by its express grant, is twenty feet wide, well in excess of what is needed solely for pedestrian access. I further find and conclude that the intention of the parties to the Easement Deed was that the owners of the Duncan Property be granted the right of ingress, egress, and access to Lake Murray, including by vehicle towing light watercraft. I find that the use of the Easement, including use by vehicle to launch watercraft, is incident or necessary to the proper use and enjoyment of the Easement. I find that this is not an additional burden on the land of the servient estate, the Drasites Property, and that such use by vehicle is as little burdensome to the use contemplated by the grant of the easement. The Plaintiff does not contend he has any right or intent to build a dock or ramp on the Easement.

6. In the absence of an agreement, the owners of the servient estate are under no duty to maintain and repair an easement for the benefit of the dominant estate. *Hayes v. Tompkins*, 287 S.C. 289, 294, 337 S.E.2d 888, 891 (Ct. App. 1985) (citing *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821 (1922)). The owner of an easement has the duty to keep it in repair. *Id.*; see also 12 S.C. Jur. Easements § 25 ("Ordinarily, the owner of the dominant tenement has the duty

to keep the easement in repair.”). The general rule is that “in the absence of a contract stipulation or prescriptive right to the contrary, the owner of an easement is liable for costs of maintenance and repairs where it exists and is used and enjoyed for the benefit of the dominant estate alone.” *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821, 823.

As previously stated, Plaintiff is entitled to use the Easement to access Lake Murray, including use by vehicle towing and launching light watercraft. Plaintiff is the owner of the dominant estate; Defendants are the owner of the servient estate. Because I find and conclude that the use of the Easement includes access to Lake Murray by vehicle towing and launching watercraft, I further find and conclude that the Plaintiff, and his successors in title, are entitled to maintain the Easement in such a way as will allow this use. Any maintenance which Plaintiff, or his successors in title, perform to allow this use, will be at such party's expense.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

- a. The Easement burdens the entire length of the Drasites Property;
- b. The purpose of the Easement is for ingress, egress, and access to Lake Murray;
- c. Included within the Plaintiff, and his successors in title's rights, to use the Easement is the right to vehicular use of the Easement, including by vehicle towing and launching light watercraft;
- d. Plaintiff and his successors in title are entitled to maintain the Easement in such a way that will allow use of the Easement, including by vehicle towing and launching light watercraft; to the extent Plaintiff, or his successors in title, perform such maintenance, it shall be at their expense.
- e. Defendants are hereby enjoined from discouraging any prospective purchasers of the Duncan Property

AND IT IS SO ORDERED.

July 20
May 2015
Columbia, South Carolina

Page 13

Joseph M. Stickland
Master-in-Equity, Richland County

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 2013-CP-40-5740

Hamilton Duncan,

Plaintiff,

vs.

Roy Drasites and Elizabeth

Drasites,

Defendant(s)

ORDER DENYING MOTION

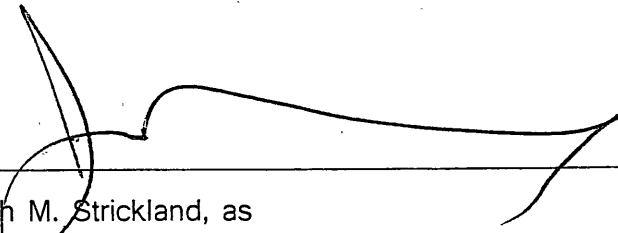
TO ALTER OR AMEND JUDGMENT

RICHLAND COUNTY
FILED
2015 DEC -4 AM 10:19
JEANETTE W. MCBRIDE
C.C.P. & G.S.

The matter before the Court is a Motion to Alter or Amend Judgment submitted by James Randall Davis, Esquire attorney for the Defendants.

The motion is denied.

IT IS SO ORDERED.



Joseph M. Strickland, as
Master in Equity for Richland County

Columbia, South Carolina

Dec. 1, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Hamilton Duncan,)
)
Plaintiff,)
)

Case No. 2013-CP-40-5740

vs.)

AMENDED SUMMONS

Roy Drasites and Elizabeth)
Drasites,)
)
Defendants.)
_____)

FILED
2014 JUN 25 PM 4:33
JAMES R. RANDALL
C.C.P. & C.S.

TO: JAMES RANDALL DAVIS, ESQUIRE, Attorney for Defendants above-named:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Amended Complaint upon the subscriber, at his office at Callison Tighe & Robinson, LLC 1812 Lincoln Street, Post Office Box 1390, Columbia, South Carolina 29202-1390, within fifteen (15) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

CALLISON TIGHE & ROBINSON, LLC



Michael W. Tighe
W. Taylor Stanley
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: MikeTighe@callisontighe.com
Email: TaylorStanley@callisontighe.com

Columbia, South Carolina
June 25th, 2014

ATTORNEYS FOR THE PLAINTIFF HAMILTON DUNCAN

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Hamilton Duncan)

C/A No.: 2013-CP-40-5740

Plaintiff,)

AMENDED COMPLAINT
(Non-jury)

vs.)

Roy Drasites and)

Elizabeth Drasites,)

Defendants.)

The Plaintiff in the above matter, Hamilton Duncan, complaining of the Defendants, Roy Drasites and Elizabeth Drasites (collectively the "Drasites"), herein, would respectfully show:

1. Plaintiff is a citizen and resident of the State West Virginia, County of Kanawha.
2. Upon information and belief, Defendants Roy Drasites and Elizabeth Drasites are citizens and residents of the State of South Carolina, County of Richland.
3. This Court has jurisdiction over the parties and the subject matter hereof.
4. By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, from A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Plaintiff and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, SC 29036, more particularly described as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further

lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

5. A copy of the deed to Plaintiff and Christine A. Hamilton is attached to this Complaint as Exhibit A and is incorporated herein by reference.

6. Christine A. Duncan passed away a citizen and resident of the State of South Carolina, County of Richland. As a result, Hamilton Duncan is the fee simple owner of said property.

7. The origin of the easement is a deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D-393 at page 150, wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case "a non-exclusive right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction from the property line of Jay Clark Case to the 360° degree contour of Lake Murray." (the "Easement").

8. Upon information in belief, "360° degree contour of Lake Murray" is the result of a scrivener's error and should read "360' foot contour of Lake Murray."

9. Subsequent to the grant of the Easement to Mr. Case, the Easement has been included in each and every deed conveying the property including the deed to the Duncans.

10. By a series of deeds derived from Woodberry Utilities, Inc., the property on which the Easement runs was conveyed to the Defendants.

11. Beginning in or about September 8, 2008, and continuing to the present time, Defendants unreasonably interfered with or obstructed the above-mentioned right-of-way by installing rip rap (rock) and a water pipe on the Easement.

12. Further, Defendants unreasonably discouraged prospective purchasers by erecting signs on their property when the Plaintiff's property was placed on the real estate market in 2008.

13. In or about 1997, Defendants, jointly with adjacent property owners, excavated the cove upon which the Easement is situate.

FOR A FIRST CAUSE OF ACTION
(Injunction)

14. Each and every allegation contained in the above paragraphs is re-alleged as if set forth verbatim herein.

15. Unless and until enjoined and restrained, by order of this court, Defendants' interference with or obstruction of Plaintiff's right-of-way easement will cause great and irreparable injury to Plaintiff, in that there is no alternative route by land from Plaintiff's property to this portion of Lake Murray. If Plaintiff is forced to use an alternative route, Plaintiff's property will be significantly depreciated and Plaintiff's use and enjoyment of the property will be substantially impaired.

16. Plaintiff has no adequate remedy at law for injuries being suffered as a result of Defendants interference with or obstruction of Plaintiff's right-of-way easement.

17. As a proximate result of Defendants' interference with or obstruction of Plaintiff's right-of-way easement, Plaintiff has been unable to use Plaintiff's right-of-way easement.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment, Boundary Dispute)

18. Each and every allegation contained in the above paragraphs is re-alleged as if set forth verbatim herein.

19. This cause of action is brought pursuant to the South Carolina Uniform Declaratory judgment Act, S.C. Code Ann. § 15-53-10, *et. seq.* (1977) and involves an actual, justiciable controversy between the parties as described herein.

20. Each and every recorded plat in both the Defendants' and Plaintiff's chain of title has the Easement extended to the edge of Defendants' property line, including but not limited to that certain plat dated April 25, 1988 and recorded May 3, 1988 in the Register of Deeds for Richland County in Plat Book 55 at Page 7241.

21. Based on the foregoing allegations, Plaintiff is informed and believes that he is entitled to and does hereby seek an order and declaratory judgment (a) declaring that the Easement extends to the edge of Defendants' property as shown on all recorded plats in both the Defendants' and Plaintiff's title chain and (b) declaring that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a water craft to the edge of Defendants' Property and further that Plaintiff is entitled to maintain the Easement in such a way as to enable Plaintiff to launch the water craft from the Easement.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays the Court inquire into the matters set forth herein for the following relief:

1. For a permanent injunction enjoining the Defendants and the Defendants' agents, servants and employees, and all persons acting under, in concert with or for Defendants from obstructing or otherwise interfering with the Plaintiffs' right-of-way easement and from

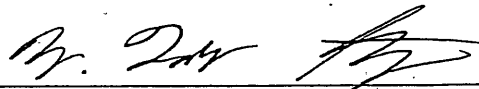
unreasonably discouraging prospective buyers; and to dismantle and remove the rip rap, water pipe or other obstructions blocking Plaintiffs' right-of-way easement;

2. For an Order declaring (A) that the Easement extends to the edge of Defendants' property (B) that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a water craft to the edge of Defendants' Property and further that Plaintiff is entitled to maintain the Easement in such a way as to enable Plaintiff to launch the water craft from the Easement.; and

3. For such other relief as is just and proper.

Respectfully submitted.

CALLISON TIGHE & ROBINSON, LLC



Michael W. Tighe
W. Taylor Stanley
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: MikeTighe@callisontighe.com
Email: TaylorStanley@callisontighe.com
ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
June 25, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Hamilton Duncan,)
Plaintiff,)

Civil Action No. 2013-CP-40-5740

-vs-

ANSWER

Roy Drasites and Elizabeth Drasites,)
Defendants.)

Defendants, answering the allegations of the Complaint, alleges as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted nor otherwise explained, is denied.
2. Defendants lack sufficient information to admit or deny the allegations contained in paragraphs 1, 8, and 9 of the Complaint and therefore denies the same and demands strict proof thereof.
3. Defendants admit the allegations contained in paragraphs 2, 3, 4, 5, 7, and 19 of the Complaint
4. In answering paragraph 6 of the Complaint, Defendants admit that Christine is deceased and was a citizen and resident of Richland County but lacks sufficient information to admit or deny the remaining allegations contained in paragraph 6 of the Complaint and therefore denies the same and demands strict proof thereof.
5. Defendants deny the allegations contained in paragraph 10 of the Complaint but admits that Defendants are the owners of Lot 1 of a final plat of Silverpoint Cove

Subdivision as shown on a plat dated April 3, 1995 and revised April 25, 1995 and is recorded in Plat Book 55 at Page 7241 and is further shown by a plat prepared for the Defendants by CTH Surveyors, Inc. dated August 9, 1995 and their deed is recorded in Deed Book 1273 at Page 242 in the Richland County Register of Deeds Office.

6. Defendants deny the allegations contained in paragraphs 11, 12, 15, 16, 17, 20, and 21 of the Complaint and demand strict proof thereof.

7. Defendants admit so much of paragraph 13 that alleges Defendants, along with the adjacent property owner, excavated the cove where the Defendants Drasites' property is located, with the permission and with a Permit issued by SCE&G. The remaining allegations of paragraph 13 are denied and Defendants demand strict proof thereof.

8. Defendants are informed and believe that paragraphs 14 and 18 of the Complaint requires no response.

FOR A SECOND DEFENSE

9. The allegations of paragraphs 1 through 8 of the First Defense are reasserted and realleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Second Defense.

10. The Plaintiff failed to state facts sufficient to constitute a cause of action in regards to its second cause of action against Defendants, and Defendants are informed and believes that the second cause of action against Defendants should be dismissed pursuant to Rule 12 (b) (6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

11. The allegations of paragraphs 1 through 10 of the First and Second Defenses are reasserted and realleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Third Defense.

12. Defendants allege that the easement grant in Plaintiff's deed is an express easement which cannot be unilaterally expanded or changed by Plaintiff or its predecessors-in-title. The termination point of the Plaintiff's easement grant, referenced in his second cause of action, is the location point described in said easement as it was on execution date of the easement grant.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants pray that the same be dismissed with costs assessed to the Plaintiff.

DAVIS FRAWLEY, LLC

By: _____

James Randall Davis

140 East Main Street, Post Office Box 489

Lexington, South Carolina 29072

Phone No.: (803) 359-2512

Lexington, South Carolina

7/12, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Hamilton Duncan, Individually and)
Hamilton Duncan, as Personal)
Representative of the Estate of Christine A.)
Duncan,)

Plaintiff,)

-vs-)

Roy Drasites and Elizabeth Drasites,)

Defendants.)

Civil Case No. 2013-CP-40-5740

**DEFENDANTS ROY DRASITES AND
ELIZABETH DRASITE'S MOTION
PURSUANT TO RULE 52 AND
RULE 59, SCRCF**

RICHLAND COUNTY
FILED
2015 AUG 10 PM 3:18
JENNIFER W. BRIDE
C.C.P. & C.V.

Pursuant to Rule 52 and Rule 59 of the South Carolina Rules of Civil Procedure, Defendants Roy Drasites and Elizabeth Drasites ("Drasites") hereby move for an Order altering and amending the Court's Order dated July 20, 2015 and entered on July 29, 2015. The grounds for this Motion are as follows:

1. The Court finds, on page 6, paragraph 14, the following: "This excavation along with erosion changed the location of the 360 contour on the Drasites property and easement so that at the time of litigation, the 360 contour was located where the Drasite sea wall was placed." There is no evidence in the record to support that erosion changed the location of the 360 contour on the Drasites property. There was no testimony by the Plaintiff in this case and there has been no competent testimony by the surveyors as to any erosion causing the 360 contour in that these surveyors were not involved in the surveying of this property at the time of the excavation. Also, there is no testimony to support that this 360 contour was changed to where the present sea wall is located on the Drasites property. The clear testimony in the case indicates that the SCE&G excavation permit which was issued for the excavation did not allow any excavation above the 360 contour so there would have been no change in the 360 contour at the time of the excavation. Furthermore, the plat which is

attached to the permit application for excavation showed that the sea wall was the location of the 360 contour at the time of the excavation. Tommy Boozer testified that the 360 contour was where the sea wall is located on the Drasites property.

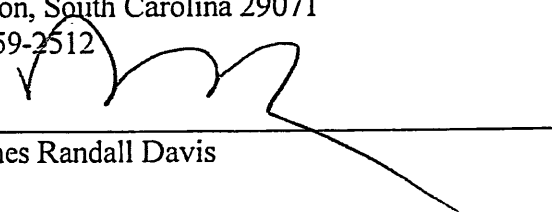
2. On page 6, paragraph 15 of the Order, there is no testimony in the record to support this Finding of Fact.
3. On page 7, paragraph 19 of the Order, the Court states the following, "As testified at hearing, the Wood Trail Subdivision was never developed as shown on the Wood Trail Subdivision plat. The land depicted is not configured as reflected thereon. In short, the Wood Trail Subdivision has never been brought to fruition." There is no testimony in the record to support this Finding of Fact. In fact, the Wood Trail plat was a recorded plat and as to the parties in the action, this plat showed the Plaintiff's lot on the plat as well as the easement in issue and also showed the location of the present Drasites property. This plat also was the closest plat, time wise, as to when the particular easement in this case was created. That plat showed a road abutting the subdivision property and that road would have been contiguous to the termination point of the easement in question. Whether the road was developed or not, is beside the point. The fact is that the road was shown on the plat and when you record a plat showing a road, grantees have certain access rights to a road shown on the plat which is referenced in the deed. Furthermore, this plat shows Lake Murray on the other side of the road; and, therefore, the easement in question did not reach Lake Murray.
4. On page 7, paragraph 20 of the Order, the Defendants make the same argument here as in paragraph 19.
5. On page 9, paragraph 3, second paragraph, the Court finds the following "At one time, all three of the Surveyors determined the Easement reached the boundary of the Drasites Property with Lake Murray." This is an error in that it only reached the 360 contour point of Lake Murray.

6. On page 9, paragraph 3, second paragraph, the Court reached the conclusion that the purpose of the easement is and was to access Lake Murray. Drasites contends that the preponderance of evidence does not indicate that easement provided access to Lake Murray. The easement only granted access to the 360 contour of Lake Murray. This is the termination point of what property was owned by the grantor in the deed. The easement does not answer the question as to access to Lake Murray and is ambiguous. When the easement language is ambiguous, the Court has to look beyond the document itself to determine intent. In this case, there is no evidence in the record and the Plaintiff did not testify that the property had ever been used for access to Lake Murray to launch a watercraft. Furthermore, when the easement was created, there was no plat referenced in the easement so there is no deed or plat showing that the easement was for the purpose of providing access to Lake Murray. Based on the record, in 1976, this would not have provided access to Lake Murray because Lake Murray would not have been excavated until 1998 and 1999. Furthermore, the Wood Trail Subdivision plat referred to in Drasites' response to Findings of Fact numbers 19 and 20 indicate that a road was located at the termination point of the easement.
7. On page 11, paragraph 5, last paragraph, the Court finds the intent of the easement was to provide "...access to Lake Murray, including by vehicle towing light watercraft." Drasites contend that there is not a preponderance of evidence indicating that this was the purpose of the easement. The easement is ambiguous as to whether access to Lake Murray is provided or not. There is no mentioning of access for vehicle towing light watercraft and there is no testimony by the Plaintiff or any other party in the action indicating that this had been done at any time since the creation of the easement in 1976. Furthermore, the easement ended at the 360 contour and SCE&G has jurisdiction of access to the water beyond the 360 contour and there is nothing in the record presented by the Plaintiff indicating that he had right of access

to Lake Murray by a vehicle towing light watercraft. The Lake Murray Land Management Regulations were presented to the Court and there was a letter presented from SCE&G through Tommy Boozer, that the Plaintiff would not be able to have a boat ramp, boat dock or any permits for excavation beyond the 360 contour. Drasites would contend the Court did not have jurisdiction to supersede the regulations that are enforced by SCE&G for the Federal Energy Regulatory Power Commission on Lake Murray.

Based on the errors in the Findings of Facts and Conclusions of Law, Drasites would ask the Court to reverse its Judgment and enter a Judgment for Drasites in that the easement did not reach Lake Murray and that the Court has no jurisdiction to grant any easement beyond the 360 contour allowing a vehicle towing light watercraft to enter Lake Murray from this easement.

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BY: 

James Randall Davis

August 10, 2015

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JAN 08 2016

SC Court of Appeals

Joseph M. Strickland, Richland County Master-in-Equity

Case No.: 2013-CP-40-5740

Hamilton Duncan, Individually and Hamilton Duncan, as Personal
Representative of the Estate of Christine A. Duncan..... Respondent

v.

Roy Drasites and Elizabeth Drasites..... Appellants.

NOTICE OF APPEAL

Roy Drasites and Elizabeth Drasites appeal the Order dated July 20, 2015 and the Order Denying Motion to Alter or Amend Judgment dated December 1, 2015. Appellants received written notice of entry of this Order Denying Motion to Alter or Amend Judgment on December 11, 2015.

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Lexington, South Carolina
January 8, 2016

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) CASE #: 2013-CP-40-5740

Hamilton Duncan and)
Christine A. Duncan,)
)
 Plaintiffs,)
v.)
)
Roy Drasites and)
Elizabeth Drasites,)
)
 Defendants.)

HEARING

Tuesday, April 28, 2015

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 28th day of April, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
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EXHIBITS

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Plaintiffs' Exhibit Number One	17
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Defendants' Exhibit Number 18	123
(Deed into Kleckley)	

1 (Plaintiffs' Exhibit Numbers One through 28 and
2 Defendants' Exhibit Numbers One through 18 were
3 marked prior to the hearing.)

4 THE COURT: This is Civil Action Number 2013-CP-40-5740,
5 Hamilton Duncan and others against Roy Drasites and
6 others. We set aside two days for trial in this
7 case, the rest of today and all day tomorrow.
8 However, don't feel like you have time constraints
9 because one of the nice things about appearing
10 before me is that I'm flexible and if you can't
11 finish in these two days, we can come back at
12 another time and finish it. Don't feel like you're
13 under time constraints. Also, let me make an
14 announcement to those who have never tried a case
15 with me. If you need a break for any reason, just
16 let me know or let the lawyers know to let me know.
17 I had one case where somebody had to go to the
18 bathroom and was afraid to say anything. That
19 didn't work out too well, so. So if you need a
20 break for any reason, just let me know and we'll
21 take a break. Now I'd like to hear brief opening
22 statements from each side.

23 MR. TIGHE: May it please the Court.

24 THE COURT: Yes, sir, Mr. Tighe.

25 MR. TIGHE: I'm Mike Tighe, attorney for the plaintiff in

1 this case. And I have with me Taylor Stanley, from
2 my firm, who has done a lot of work and will
3 participate in the trial. This case involves an
4 express easement that is on record in Richland
5 County here, given by the previous owner of Mr.
6 Drasites' lot to the prior owner of Mr. Duncan's
7 lot. And it's, we think, clear on the face of it
8 what the length and extent and purpose of it is, but
9 those are issues that are going to be in this trial.
10 Now, Mr. Duncan could not be present today because
11 he's taken a new job in Texas, and he simply just
12 couldn't get away from it to be here. He'd like to
13 be here, but the -- I think the documents and the
14 surveyors will carry the day. And, as Your Honor
15 knows, back in October there was a tentative
16 settlement in which the two surveyors, one for each
17 side, went and selected a third surveyor, which they
18 did do, and that surveyor was supposed to report to
19 the Court, as were the others. Now, it may be that
20 the technical reporting was not as everybody thought
21 it was going to be, but the third surveyor gave a
22 report which put him in the same camp with our
23 surveyor. We have all three surveyors here today,
24 and I'm sure that they'll all testify. But, you
25 know, I would hope that we could not take two days

1 and limit the testimony to that, but Your Honor's
2 already ruled on that. And I simply wanted to tell
3 you that -- I wanted to put that on the record.

4 **THE COURT:** Yes, sir.

5 **MR. TIGHE:** But we have all the surveys that have ever
6 been made since this easement was granted and have
7 shown the easement going to the boundary line of Mr.
8 Drasites' lot that is adjacent to the lake. And the
9 only issue that -- the two issues that I think will
10 be framed today are that Mr. Drasites would like to
11 say that the extent of the easement doesn't go all
12 the way to the boundary line of his lot, that it
13 stops where he put a seawall and riprap on the rest
14 of his lot, not in front of the easement, because
15 that's where the 360 contour might be today. We
16 would say that his property line is determined by
17 where the 360 contour was when the lot was created
18 and that the easement specifically says that it goes
19 to the full length of his property line, side
20 property line. The purpose of the easement, the
21 easement language itself, that's to be introduced
22 into evidence, says, "A non-exclusive right of
23 ingress and egress over a 20-foot strip, running in
24 a southwesterly direction along the southwestern
25 side of Tract A." That's Mr. Drasites' property.

1 "And extending from the property line of Jay Clark
2 Case," that was the predecessor in outright, "to the
3 360," it says 360 degrees but everybody knows that
4 meant contour, "of Lake Murray." And that's the
5 whole easement. We have the surveyors here, who
6 will testify that of course the 360-foot -- that
7 area that's 360 degrees -- 360 feet from mean sea
8 level never changes. If you change the land
9 however, the contours can change. And so the -- Mr.
10 Drasites has dredged in front of his lot. It looks
11 to me like he's lost up to 20 percent of his lot by
12 putting a seawall and riprap in, and it may be that
13 that is the 360 degree contour today. But there is
14 no evidence that the 360-foot contour was not at the
15 far reach of his property line, which is now, he
16 would say, under the waters of the lake by about 20
17 feet from his seawall. And that's basically the
18 whole case, Your Honor.

19 **THE COURT:** All right. All right, Mr. Davis?

20 **MR. DAVIS:** Your Honor, may it please the Court. Mr.
21 Drasites is here, and he's my client, his wife also.
22 She's not here, she's a school teacher I believe;
23 isn't she, Roy?

24 **MR. DRAYSITES:** Yes.

25 **MR. DAVIS:** And so she's teaching school, but he's here.

1 The essence of this thing is this: There -- as Mr.
2 Tighe said, there is an easement of record that was
3 created as a separate document, just an easement.
4 It says -- and it crosses over Mr. Drasites'
5 property; that's admitted. It says it's an easement
6 for ingress and egress to the 360 contour of Lake
7 Murray. It doesn't say for lake access or for what
8 purpose it's for. It just says it's for the purpose
9 of ingress and egress to the 360 contour. There is
10 no plat in that easement. There is no plat or
11 survey that identifies where that 360 contour is.
12 There is an ambiguity here because there is no plat
13 in that easement. The plaintiff later on receives
14 the property, is the third purchaser, and a plat was
15 done for -- later on, after the easement was
16 created. Again, the original easement has no plat
17 to identify where that 360 contour is. There's a
18 conveyance from -- and Mr. Case is the one that has
19 that easement. He conveyed the property to Mr.
20 Craft and Mr. Craft conveyed it to the plaintiff.
21 There was a plat done by Mr. Craft on -- for this
22 easement. But that plat, when you look at it, Your
23 Honor, and it's going to be in evidence, when you
24 look at it, that plat shows an easement on Mr.
25 Drasites' property going to the lake. But when you

1 look at the plat and see what references are
2 referred to in that plat, there's absolutely nothing
3 in that plat that indicates where that surveyor got
4 his information from to determine the length of that
5 easement. Nothing. We submit to you there's an
6 ambiguity in what the plaintiff will be able to
7 prove in this case, even with the surveyors
8 testifying, there's ambiguity. And because of that
9 ambiguity, that should not be held against my client
10 as to what is really out there as easement. But to
11 further show that what the real deal here is, when
12 this -- in my opinion, when the Court looks at what
13 it has to decide here, it has to make a decision -
14 what was the intent of the easement when it was done
15 in 1976, what was the intent at that time. And you
16 look at the document to do it. The only plat that
17 defines that easement as to where it ends was done
18 in 1981, which is five years after the easement.
19 That plat shows this easement not going to Lake
20 Murray. It shows that easement terminating adjacent
21 to a road which was in existence. So, in other
22 words, the point is, what was the intent at that
23 time? It isn't to go to Lake Murray, because Lake
24 Murray was not there at that time, period. What was
25 there was a road. So the purpose of it really,

10

1 based on the plat, is for getting access to that
2 road that the easement ended at, its position to Mr.
3 Drasites So that's number one. Number two, when
4 surveyors look at -- or make surveys, there are
5 certain priorities. And I know the Court knows
6 this. But, you know, one of them is distances, but
7 the other one is monuments. Our position is that
8 there was excavation done on Mr. Drasites' property
9 to below the 360 contour of Lake Murray. But the
10 360 contour did not change. It's in the same place.
11 And the power company suggests, and in this case
12 they did, Mr. Drasites put down a retaining wall
13 where the 360 contour is. And that -- there's a
14 plat that shows where that retaining wall is, and
15 that's where we say the easement ends. But to
16 further complicate this matter is, if you look at --
17 this is the end of this, but when you look at the --
18 where the easement goes, the power company, when you
19 hit the 360 contour, has control over what's below
20 the 360 contour. Now, we have evidence that's in
21 the record that there is almost nothing that the
22 plaintiff can do for access to Lake Murray water,
23 even if it got to Lake Murray, based on the policies
24 of Lake Murray. And that -- and Mr. Boozer, who's a
25 representative of SCE&G's here to testify. That's

1 the defendant's position.

2 **THE COURT:** Okay. Thank you. Let me mention something.

3 Mr. Duncan isn't here today?

4 **MR. TIGHE:** No, sir.

5 **THE COURT:** Does that cause you any problem, Mr. Davis?

6 **MR. DAVIS:** That's -- you know, if he's not testifying,
7 that's part of their -- you know, if he's not here,
8 he's not here. Doesn't mean it's a problem for me.
9 If he's not here to testify, that's -- deals with
10 what they can present here.

11 **THE COURT:** Well, do y'all want to keep the record open
12 for him -- for a time that he can be here, or? I'm
13 not saying we stop today, we go forward today but we
14 may need to keep the record open, or is that ...

15 **MR. TIGHE:** I think if Your Honor would be willing to keep
16 the record open for say ten to 15 days. I wouldn't
17 want to delay it much more than that.

18 **THE COURT:** All right. Mr. Davis?

19 **MR. DAVIS:** Your Honor, my position is that this thing has
20 been scheduled for three months, and we're here. So
21 I'm ready for the Court to make a decision whenever.

22 **THE COURT:** Yeah, but would you object to keeping the
23 record open after we finish up here today or
24 tomorrow to let him get his testimony on the record?
25 The reason I ask that, I guess I should flesh it out

1 a little bit, from both of your opening statements,
2 I felt questions rising up in my mind. For example,
3 I wondered if there's anybody around back in 1976,
4 or 1981, who was going to testify. And another
5 question was, quite frankly, why would you buy a
6 property at the lake if you couldn't have access to
7 the lake. And, you know, so that's -- that's the
8 kind of information I'd like to know. And I think
9 it would help me.

10 MR. DAVIS: Okay.

11 THE COURT: Has his deposition been taken?

12 MR. TIGHE: Yes, sir, we -- not him. We have Mr.
13 Drasites' deposition, which we're going to offer in
14 our case.

15 THE COURT: All right.

16 MR. TIGHE: And in it, Mr. Drasites says that he knows
17 that Mr. Duncan and his predecessor in title used
18 the access to get to the lake.

19 THE COURT: Okay.

20 MR. DAVIS: I need to respond to that, Your Honor.

21 THE COURT: Yes, sir.

22 MR. DAVIS: What the deposition says -- to walk, the
23 plaintiff now wants to take a boat to go down to
24 that easement to get to the lake is what he wants to
25 do. There was never any -- nothing in that

1 deposition about using a boat or a car to get to the
2 lake, period.

3 **THE COURT:** Did y'all take Mr. Duncan's deposition?

4 **MR. DAVIS:** No.

5 **THE COURT:** Okay. Okay. So to hear what he has to say, I
6 have to hear what he has to say.

7 **MR. DAVIS:** If the Court feels like it wants to leave it
8 open for that period of time, yes, sir.

9 **THE COURT:** Yeah. And we'll see, I may change my mind on
10 that after I hear all the evidence that's going to
11 be presented today, so. All right. Thank y'all.
12 Mr. Tighe, you may call your first witness.

13 **MR. TIGHE:** Thank you, Judge. I'm going to offer Mr.
14 Drasites' deposition, which we did not mark, as a
15 plaintiff's exhibit. There are various things in it
16 ---

17 **THE COURT:** Hold on one second. She's got to mark it.
18 (Plaintiffs' Exhibit Number 29 is marked for
19 identification.)

20 **MR. TIGHE:** And we may refer to it from time to time in
21 our case. But it's -- Mr. Drasites testified in
22 there that he knew people were using the easement
23 who owned Mr. Duncan's lot.

24 **THE COURT:** All right. You say you may refer to it. Are
25 you going to publish it? I would think ---

1 MR. TIGHE: I can publish that part. There may be other
2 parts as well that we find useful.

3 THE COURT: All right. Mr. Davis, that be a problem with
4 that, the way he's using the deposition?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: Mr. Tighe, you may proceed.

7 MR. TIGHE: On page 58 of his deposition, the question is
8 asked: "You also say we have never interfered with
9 the owners of 1312 Silver Point Road, use of the
10 easement?" Answer: "We never interfered with the
11 Crafts, who owned it at the time we bought our
12 property. The easement was abandoned. It was ---"
13 "How was it abandoned?" "It was covered with
14 trees." "And that constitutes abandonment?"
15 Answer: "The Crafts never used the easement till we
16 cleared the easement. At the time after we cleared
17 it, they put in a water pump, an irrigation pump,
18 which we thought was fine, we didn't care." "I'm
19 sorry, who put a ---" "The Crafts." "The Crafts
20 put that pump -- was ---" "They were there, they
21 were owners from 1997 to 2002, when we owned the
22 property next to them." "Okay." Answer: "When we
23 bought the property there was a broken pump line, so
24 we were trying to speculate earlier what was the
25 purpose of the easement. One of the things we

1 thought was the purpose was to get water to go from
2 Lake Murray to the Case property. But that didn't
3 make sense because the easement would have said from
4 the property line to the waters of Lake Murray, not
5 ending at the 360, because they couldn't get water."
6 That's pages 58 and 59. Our first witness will be
7 Dennis Johns.

8 **THE COURT:** Okay.

9 **MR. TIGHE:** Your Honor, we've pre-marked all the exhibits
10 and we've agreed -- I might move admission with all
11 of our exhibits, except the one that Mr. Davis may
12 want to argue about, and we'll take that as we go.
13 But instead of offering them from time to time, I'd
14 like to move One through 29, plaintiff's exhibits,
15 into evidence.

16 **THE COURT:** Now, which one are you not going to ---

17 **MR. DAVIS:** We have one that we have an objection to, but
18 ---

19 **THE COURT:** Which one is that?

20 **MR. DAVIS:** It is, let's see. You pulled it out? Okay.
21 He's pulled that one out, so no objection to those.

22 **THE COURT:** Yeah. Which one is, which one is that?

23 **MR. TIGHE:** He has no objection. We took out the one he
24 objected to.

25 **THE COURT:** Oh, okay. I'm sorry.

1 MR. DAVIS: You pulled it as evidence?

2 MR. STANLEY: It has not been marked.

3 MR. DAVIS: Okay.

4 MR. TIGHE: It's not one of these that's in evidence.

5 MR. DAVIS: Okay.

6 (Plaintiffs' Exhibit Numbers One through 29 are entered
7 into the record.) (Witness is sworn.)

8 Dennis Johns, being duly sworn, testifies as follows:

9 MR. JOHNS - DIRECT EXAMINATION BY MR. TIGHE:

10 Q: Mr. Johns, will you state your name and address for
11 the record?

12 A: Dennis G. Johns. And I live in Lexington at 234 Yale
13 Road, in Lexington County.

14 Q: And how -- where'd you go to high school?

15 A: I went to Allendale Fairfax High School in Allendale
16 County in the lower part of the state.

17 Q: Do you have any education after high school?

18 A: I attended Midlands Technical College and obtained an
19 associate degree in civil engineering, with an
20 emphasis on land surveying.

21 Q: And are you employed as a land surveyor today?

22 A: Yes, sir, I have my own business.

23 Q: And have you been licensed by the state of South
24 Carolina as a professional land surveyor?

25 A: Yes, sir, since 1978.

1 MR. TIGHE: Your Honor, we would tender him as an expert
2 in the field of ---

3 MR. DAVIS: No objection.

4 THE COURT: All right, your motion's granted, Mr. Tighe.

5 MR. TIGHE: Sir?

6 THE COURT: Your motion is granted.

7 MR. TIGHE: Thank you, sir.

8 Q: Now, Mr. Johns, have you been retained by the
9 plaintiff in this case to make an investigation into
10 the easement at issue here?

11 A: Yes.

12 Q: And what did you do in connection with your work?

13 A: We went out and located property monuments, the iron
14 pins along the property lines, and also any
15 improvements, any items inside of the easement area.

16 Q: Did you look at the actual easement itself? I hand
17 you Plaintiffs' One to refresh your recollection.

18 A: Yes, sir, we did. Yes, sir, that's correct.

19 Q: And did you look at any other surveys and things as a
20 part of your research?

21 A: Yes, sir. There were quite a few surveys in the chain
22 of the research that we did.

23 Q: And does that written easement, Plaintiffs' One, give
24 the dimensions of the easement?

25 A: It gives a width of 20 foot.

- 1 Q: And does it say where the easement runs?
- 2 A: To the 360 degree contour of Lake Murray ---
- 3 Q: Along ---
- 4 A: --- from the -- right. Along the property on the
- 5 southwesterly direction of the southeastern side of
- 6 Tract A.
- 7 Q: All right. And is Tract A the property that belongs
- 8 to the defendants, Mr. and Mrs. Drasites?
- 9 A: That's correct.
- 10 Q: As far as you know? Now, I'm going to hand you
- 11 Plaintiffs' 19 and ask you if that's not a survey that
- 12 you did.
- 13 A: Yes, sir, that's correct. That's the survey we did.
- 14 Q: And you did another survey that is Plaintiffs' 16?
- 15 A: That's correct. That was at a later date.
- 16 Q: What's the difference between those two surveys,
- 17 Dennis?
- 18 A: We do show contours on the latter survey line.
- 19 Q: Okay. That's 16.
- 20 A: And a little more notations about the reference plats.
- 21 Q: Okay. Now, from your research, were you able to
- 22 determine whether the 360 contour, not the elevation,
- 23 but the 360 contour has changed from the time of the
- 24 grant of the easement till the date of this plat?
- 25 A: Apparently, by all the measurements that we have, yes,

1 sir.

2 Q: And has the 360 contour moved inward from the lake?

3 A: That's correct.

4 Q: And how could that occur?

5 A: By physical or manmade machinery or machinery and
6 dredging. There's apparently a wall there that's
7 holding, a retaining wall which is holding land up on
8 the landward side. And then it drops off to the lake
9 there. Also, in the 20-foot easement area you can see
10 some excavation marks there, some of the exposed roots
11 from the trees and such as that that's not as severe
12 where the retaining wall was constructed, but
13 nonetheless some manmade excavation there. Not the
14 natural type slope.

15 Q: Now, when you follow the easement down toward the
16 lake, do you come to a point where there's a drop off
17 of the terrain?

18 A: Yes, sir.

19 Q: And is that near the -- where his retaining wall is?

20 A: Yes, sir, at the retaining wall is definitely
21 unnatural drop-off there.

22 Q: And how far down is that drop-off? Roughly.

23 A: I'd say somewhere in the three-foot range at the
24 retaining wall. But over the easement area it's not
25 that severe of a drop off.

1 Q: But, I mean, right at the end, is it three feet from
2 the surface of the grade to the next grade down, or is
3 that -- is it less than that?

4 A: It's like any slope; it'll be just a few inches, then
5 start getting steeper as you go toward the old stream
6 bed.

7 Q: But when you go toward the lake, when you get to the
8 end of the grassed area, there's a drop-off of less
9 than three feet, isn't it?

10 A: Yes. Yes.

11 Q: Now, you also say on your surveys, you marked the
12 boundary -- the western -- I guess it's the
13 southwestern boundary of Mr. Drasites' lot as being
14 roughly -- you show his boundary line out beyond the
15 seawall; is that correct?

16 A: That's correct.

17 Q: And are there irons out there that you were able to
18 find?

19 A: Not in the water itself. It was -- the water was down
20 during one of the surveys and up one of the others,
21 but we did not find any irons out in the water.

22 Q: Okay. But you located the points based on existing
23 surveys?

24 A: Yes, sir. We -- dimensions from adjacent property
25 pins, as we do in any survey, if there's a missing

1 iron pin, we would use distances to the adjoining
2 property pins.

3 Q: Now, based on existing surveys, do you have an opinion
4 as to where the 360 contour was at the time the lot
5 was subdivided?

6 MR. DAVIS: Objection, Your Honor. If he wants to tie it
7 to a reasonable standard for surveyors, please, I'd --
8 that'd be my objection.

9 MR. TIGHE: Okay.

10 THE COURT: Well, hold on a second. All right. State
11 your objection again, Mr. Davis.

12 MR. DAVIS: My objection is that he asked -- he just asked
13 the surveyor what was his opinion. I think the
14 question should be to the reasonable standards of a
15 surveyor.

16 MR. TIGHE: I can do that.

17 THE COURT: Okay.

18 Q: To the reasonable standards of a professional land
19 surveyor, are you able to say, after research, where
20 the 360 contour line of the lake would have been at
21 the time of the subdivision of this lot?

22 A: Yes, sir, that's correct.

23 Q: And where would the 360 contour have been?

24 A: As we've indicated on this plat, some 20 feet down
25 from the existing seawall.

1 Q: Out into the lake?

2 A: Yes.

3 Q: Or into the area where the lake might be if there's
4 enough water?

5 A: That's correct.

6 Q: Okay. And you've looked at a lot of other surveys
7 about -- for all this, I believe. And I want to show
8 you some of those now. I'm handing you Plaintiffs'
9 Exhibit Three, which was dated in -- let's see.
10 You'll have to tell me, when is that survey dated,
11 Dennis?

12 A: This is one by CTH Surveyors, '95, 04/03/95.

13 Q: And does it show the easement?

14 A: Yes, sir, it does.

15 Q: Does it show the easement going -- where does it show
16 the southwestern terminus of the easement to be?

17 A: Down at the Lake Murray -- along the complete tract of
18 lot 1 from the Jay Clark Case property all the way to
19 the Lake Murray property line.

20 Q: Meaning the 360 contour?

21 A: Yes, sir.

22 Q: And did you review Plaintiffs' Exhibit 18, which was a
23 plat for Jay Clark?

24 A: Yes, sir, I did.

25 Q: And what -- does that plat show the easement itself?

1 A: It does. Show the 20-foot easement.
2 Q: Does it show it running along the entire lot line of
3 what's now Mr. Drasites' lot?
4 A: Exactly. Yes, sir.
5 Q: And does it show the southwestern terminus of the
6 easement?
7 A: It does show that.
8 Q: And what does it show?
9 A: It shows it going to a 360 contour and Lake Murray
10 line right there.
11 Q: Okay. And, now, you've also seen -- you don't need
12 that one. Have you seen this survey, Plaintiffs' 22,
13 which is of record in this case?
14 A: Yes, sir, that's correct.
15 Q: And what does that show about the dimensions and
16 location of the easement, if anything?
17 A: It shows that same 20-foot easement on the
18 southwestern side.
19 Q: Does it show the terminus?
20 A: Yes, sir.
21 Q: Where is the terminus?
22 A: The property line of that same parcel, lot 1, the
23 Drasites property now.
24 Q: And does it give any indication as to where the lake
25 is?

1 A: Yes, sir, it does.

2 Q: What does it say? What does it indicate?

3 A: It indicates Lake Murray is the adjacent property
4 owner at the terminus of that property line.

5 Q: Okay. And are you familiar with how the lake boundary
6 line between Lake Murray and adjoining property owners
7 was determined originally in most areas?

8 A: Yes, sir.

9 Q: And did that involve the 360 contour?

10 A: That's correct.

11 Q: Okay. Now, can you tell the Court what the difference
12 is between the 360 contour and the 360 elevation?
13 Contour lines are physical ---

14 A: 360 -- a contour is of course a vertical measurement,
15 an elevation on that. And my understanding of Lake
16 Murray is established, the full pool was established
17 using the 360 contour line.

18 Q: And was property deeded back over to the landowners
19 down to the 360, as far as you know?

20 A: In many, many cases it was. There's some areas it's
21 still not done. But, yes, sir, that's correct. It
22 was usually what they referred to as the fringe land.

23 Q: Yeah. I'm handing you Plaintiffs' Exhibit 24) which
24 is another survey for Jay Case. And I ask you if this
25 shows ---

1 MR. TIGHE: Beg your pardon.

2 Q: Here's Plaintiffs' Exhibit 28, and ask you if that's
3 your signature?

4 A: Yes, sir, that's correct.

5 Q: Can you publish that to the Court, please? By which I
6 mean read the letter.

7 A: Yes, sir. It's dated November 25th, 2014. "Court
8 Case C/A Number 2013-CP-40-5740, Hamilton Duncan
9 versus Roy and Elizabeth Drasites. To Whom it May
10 Concern, in regard to a letter from Larry W. Smith,
11 PLS, concerning the above mentioned court case, I
12 confirm that I, Dennis G. Johns, PLS, am in agreement
13 with his finding which is the access easement in
14 question begins at the plaintiff's property and
15 continues across the entire property of the
16 defendants."

17 Q: Thank you very much.

18 MR. DAVIS: Your Honor, may it please the Court.

19 THE COURT: Hold one second.

20 MR. DAVIS: I thought you were finished. I'm sorry.

21 MR. TIGHE: I'm sorry?

22 MR. DAVIS: I thought you were finished, I'm sorry.

23 Q: Answer any questions that Mr. Davis might ask you.

24 MR. JOHNS - CROSS-EXAMINATION BY MR. DAVIS:

25 Q: Mr. Johns, let's see, where are all those exhibits we

1 had up there?

2 A: All these?

3 Q: Yeah. Let me ask this: If you're doing a survey for
4 Mr. Duncan and you want to establish the precise area
5 for his easement, in this case the 20-foot easement,
6 isn't it not true you would start with the actual
7 easement document that granted his predecessor in
8 title the easement? I.E., Exhibit -- Plaintiffs'
9 Number One.

10 A: It would be reviewed, that's correct.

11 Q: But that would be the central document initially for
12 you to look at to determine the easement grant?

13 A: Again, it would be reviewed.

14 Q: All right. But my question ---

15 A: It doesn't give you a starting place because there's
16 no graphical representation of it.

17 Q: Okay. But if Mr. Duncan comes to you and he says, I
18 want a survey of the easement, am I correct or am I
19 incorrect that you would start with the actual
20 easement grant to see what was granted, which is
21 Plaintiffs' Number One?

22 A: When you say start, when a survey is begun there's a
23 lot of things that happen then. Usually there's some
24 conversations that go on. But that would be one of
25 the documents that we would review.

1 Q: Would it be a primary document?
2 A: Yes.
3 Q: Okay. And in this Plaintiffs' Number One it says, "a
4 right of ingress and egress over a 20-foot strip to
5 the 360 contour," correct? Of Lake Murray.
6 A: It doesn't say that. It says 360-degree, right.
7 Q: Let's just say it's a mistake.
8 A: Okay.
9 Q: Okay? A mistake.
10 A: A mistake.
11 Q: A lawyer's scrivener's error.
12 A: Right.
13 Q: Or maybe the surveyor gave bad information, I don't
14 know. But 360 contour of Lake Murray.
15 A: It wasn't the surveyor now, because there wasn't a
16 survey involved.
17 Q: I understand.
18 A: If there was a survey involved, we wouldn't be here
19 today.
20 Q: But in that document, Plaintiffs' Number One, there is
21 not a plat or a survey that shows where that 360
22 contour is?
23 A: No.
24 Q: Okay. That creates ambiguity, does it not?
25 A: Not in my mind.

1 Q: Let me ask it this way: Based on reviewing just that
2 document at this point, when there's no plat or survey
3 to determine where the 360 contour is, does that
4 create an ambiguity in your mind as to where that 360
5 contour is?

6 A: Not in my mind or a surveyor's mind.

7 Q: Okay. So then I take it from what you're saying is
8 you'd start looking around to see where -- how to
9 establish that 360 contour?

10 A: That, and the background that I have.

11 Q: Okay. All right. So we know in this case that we've
12 got -- the initial document does not say where the 360
13 contour is by itself, that document; is that correct?
14 It just says 360 contour, period?

15 A: That is a location.

16 Q: It is a location, but there is no pictorial or survey
17 ---

18 A: Yes.

19 Q: --- of where that is?

20 A: No, sir.

21 Q: Okay.

22 A: Not that I've been able to see.

23 Q: Okay. Now, the -- there's a deed from Mr. Case,
24 there's a deed from Mr. Case to a Mr. Craft that
25 references a survey. And that is a survey, if I can

1 get it ---

2 **MR. DAVIS:** Sorry, Your Honor, be just a second. I'm just
3 trying to find it.

4 **THE COURT:** Okay.

5 **MR. DAVIS:** It's here somewhere. I think. Let's see
6 here. Just one second. I'm looking for Site
7 Consultants plat. That's the one you said it was
8 introduced?

9 **MR. TIGHE:** I think it was.

10 **MR. DAVIS:** Okay.

11 A: Yeah, I think it's -- Lucius Cobb?

12 Q: Yes. I'm trying to find that plat.

13 **MR. DAVIS:** Eighteen?

14 **MR. STANLEY:** Yes. I think that's what you're referring
15 to.

16 **MR. DAVIS:** Yeah.

17 **MR. TIGHE:** You can use this one.

18 **MR. DAVIS:** Okay, let's -- can I? Okay.

19 Q: There's a deed from Mr. Case, who was granted the
20 easement. And in that deed from Mr. Case to Mr.
21 Craft, and also the deed from Mr. Craft to the present
22 owner, there is a plat that's referenced in the deed,
23 is it not, and it would be that plat right there,
24 which is a plat done by Site Consultants in 1988. And
25 I think we believe it to be Exhibit Number 18. Did

1 you review that plat and get -- before -- or, did you
2 consider that plat in giving your opinion in this
3 case?

4 A: Yes.

5 Q: Okay. All right. So at this point, from what we know
6 is, we've got a easement that says 360 contour. Now
7 we've got a plat that's in the chain of title to the
8 plaintiff's property, in the chain of title to the
9 plaintiff's property, showing what is Mr. Case's lot
10 and also showing an easement. And this is the
11 easement that you're talking about in this case that
12 you testified to; is it not?

13 A: Yes.

14 Q: Okay. Now, so what we've got on this plat, the second
15 piece of evidence in the plaintiff's chain of title is
16 this plat that's showing his lot and also the
17 easement. What is the reference material on that
18 plat, by that surveyor?

19 A: He uses the deed 393 at page 150.

20 Q: Okay. And that deed, if I'm not mistaken, is
21 Plaintiffs' Number One; it's the actual easement, deed
22 393 at 150, correct?

23 A: That's correct.

24 Q: Okay. And again, that document only says 360 contour,
25 correct?

1 A: The deed.

2 Q: Yes.

3 A: That document.

4 Q: Okay. And what else did they reference on that
5 document, as referenced to create that plat, which is
6 Exhibit 18?

7 A: They reference a plat book in the lower section there,
8 Plat Book Y at page 1910.

9 Q: Okay. So what is -- what if, from a surveyor's point
10 of view, what did this surveyor use to determine the
11 information for the measurements on this plat, based
12 on his survey there?

13 A: The width, the 20-foot easement, is described in this
14 plat, and also the 360 contour is described in the
15 deed, rather.

16 Q: All right. I understand that there's no question
17 based on Plaintiffs' Number One that he could say that
18 there was a 20-foot easement.

19 A: Right.

20 Q: Tell me how, based on the reference material on this
21 plat, how did he determine the length of that easement
22 and where the 360 contour was, based on the
23 information in that plat?

24 A: He found existing iron pins on that property line.

25 Q: He found ---

1 A: He also says, "the same being shown as the plat by Jay
2 C. Case by Douglas E. Platt," so it refers to another
3 plat also.

4 Q: Okay. Let's look at ---

5 A: That's one of his references.

6 Q: All right. Let's look at Plaintiffs' Number 24. So
7 he references a plat done by Doug Platt, correct?

8 A: That's correct.

9 Q: Here is Plaintiffs' Number 24. Does that plat, is it
10 fair to say that that is a fair representation only of
11 the lot of Mr. Case, but there's nothing on that
12 document that says anything about the easement?

13 A: There is nothing on here.

14 Q: Okay. All right. Now, so what we've got is, we've
15 got an easement with no survey; we've got another
16 survey that he references that shows no easement; and
17 then we have a third survey, which we believe is
18 Exhibit Number 18, that gives no reference materials
19 as to defining the length or the location of the 360
20 contour except your testimony that he put -- found
21 irons, or put irons down?

22 A: He surveyed the property and the easement. So him
23 referring to that document there by Douglas Platt,
24 he's referring to it as the boundary of the property.
25 The easement is referred to again, as he refers to

1 here, is in the B393 at page 150, which is ---
2 Q: Okay.
3 A: --- there. Now, the Plat Book Y at 1910 is another
4 document. Done PCOL
File CONC AD
151
21
5 Q: Yeah. Did you look at that plat?
6 A: Yes.
7 Q: Okay, where is that plat?
8 A: Do you have it in here?
9 Q: I don't know what plat it is.
10 A: Okay. I don't recall ---
11 Q: Okay.
12 A: --- by that number.
13 Q: Okay. All right. So ---
14 A: And maybe it's a Civil Engineering plat.
15 Q: Okay. Wouldn't it be correct that if you were doing
16 this survey, that you would have referenced any
17 surveys that you could get your hands on that
18 identified the length of that easement and the
19 location of the 360 contour? Would you have done
20 that?
21 A: If available, yes.
22 Q: Okay. Well, I ask you this: to look at this survey
23 and look at that survey and the survey that we just --
24 that you were testifying to was done in 1988, correct?
25 A: Correct.

1 Q: Okay. So here's a survey showing -- this is a survey
2 in 1981 showing this subdivision and -- and this is an
3 exhibit, I believe. It's called the Woodtrail plat.
4 This is a recorded subdivision, is my belief; would
5 you agree that's correct?

6 A: That's correct.

7 Q: Okay. Did you review that survey in making your
8 decision today about the ---

9 A: Yes.

10 Q: --- 360 contour? Okay. All right. On this survey in
11 1981, why didn't the surveyor reference this survey on
12 -- the one that was done by Site Consultants in ---

13 A: Here it is.

14 Q: Yeah. Why didn't -- if this is of public record, like
15 you said, you would check things out the best you
16 could, why didn't he reference this survey on his
17 plat, if you know? You may not know, but do you have
18 any opinion on that?

19 A: I couldn't answer that.

20 Q: You don't know?

21 A: No.

22 Q: Okay. All right. Looking at what I call the
23 Woodtrail plat, do you see Mr. Case's ---

24 A: I do.

25 Q: --- lot?

1 A: I do.

2 Q: Do you also see the easement in question?

3 A: Yes, I do.

4 Q: And is it the same -- is the easement measurements the

5 same on the Woodtrail plat as Site Consultants has on

6 Exhibit Number 18?

7 A: Yes.

8 Q: Okay. And on looking at the Woodtrail plat, when you

9 get down to the end of the easement, what do you find?

10 A: That it crosses the entire property, to the SCE&G

11 property.

12 Q: What is the area that I -- on this plat, if you can

13 tell, what is the orange area on this plat?

14 A: It's a road taken from a county tax map.

15 Q: Okay. And does the plat -- this plat was done by

16 Civil Engineering?

17 A: That's correct.

18 Q: And this thing says it's done by Bill -- I believe by

19 Bill Brown.

20 A: That's correct.

21 Q: This Civil Engineering is a good engineering firm,

22 surveying firm?

23 A: Yes, sir.

24 Q: Okay. All right. And is it not true that at the end

25 of this easement on the Woodtrail plat, which is the

1 same as Exhibit 18, there is a road, a dirt road
2 located at the end of that easement?
3 A: There's a dirt road that's indicated on a tax map. He
4 doesn't physically say a dirt road.
5 Q: Yes, he does. What's that say right there?
6 A: It says "Dirt road located as indicated on Richland
7 County tax map."
8 Q: Okay. And so he has taken a survey that's been
9 recorded and shown a dirt road which comes up to the
10 point where this easement intersects with the easement
11 that's referred to on Exhibit 18; is that not true?
12 A: He's taken a dirt road from a tax map.
13 Q: Okay.
14 A: A previous ---
15 Q: Okay.
16 A: --- document.
17 Q: Okay. And he is showing a road in this area; is he
18 not?
19 A: Again, as I stated, he's showing a road taken from the
20 county tax map.
21 Q: What does he say right there?
22 A: Dirt road.
23 Q: Okay. Dirt road. And is it true, is it true that the
24 easement that we're talking about terminates on what
25 this surveyor shows as a dirt road? In 1981.

1 A: They show Lake Murray is the adjoining property owner
2 there. That's where ---

3 Q: Mr. Johns, does the lake -- does that plat show Lake
4 Murray touching the end of that easement on that plat?

5 A: I can't tell by this plat. They show Lake Murray
6 further down here, which appears to be a water
7 surface.

8 Q: What's the confusion as to being able to identify Lake
9 Murray and then there's the road and then the end of
10 the easement?

11 A: That's a dash-type line, which would indicate the
12 property would continue going ---

13 Q: The Lake Murray seems to be a straight line to me, not
14 dashed.

15 A: No. The dirt road line.

16 Q: Okay. All right. But on that plat, is it not fair to
17 say that between the end of the easement there is a
18 dirt road that he defines, and then there's a Lake
19 Murray beyond that dirt road?

20 A: He defines a dirt road, with further evidence.

21 Q: Whatever you want to classify that road is fine with
22 me. He says dirt road.

23 A: Right.

24 Q: But my question is, there is a dirt road, as you
25 define, between Lake Murray and this easement?

Answer to
W/10/15

1 A: As they define.

2 Q: Okay. And isn't it possible, and probable, that maybe
3 this easement was not to get to the lake, because the
4 water's on the other side of that road, but was to get
5 to this road area? Why isn't that possible? Or
6 probable?

7 A: He has access to another road.

8 Q: What do you mean by that?

9 A: Up here, the road up here.

10 Q: He does. He does. But that -- if you were doing the
11 survey and you saw there's a road there, physically a
12 road, and you've got easement coming in to it,
13 wouldn't it be practical to say, hey, that easement
14 ties into that road? Isn't that not true?

15 A: It's an -- it doesn't define, as I recall, it's an
16 ingress/egress, which could be exactly what that says,
17 ingress/egress.

18 Q: Okay. All right. What's more important to the
19 surveyors, monuments or distances?

20 A: They really go together.

21 Q: Okay.

22 A: A monument, if it isn't called for, and a prescribed
23 distance going to it, it could be invalid.

24 Q: Okay. In this situation, there is -- on your survey -

25 --

1 A: Right.

2 Q: Let's see where that is. At Exhibit 19.

3 MR. DAVIS: How about pull out the Johns plat so I can

4 give one to the judge.

5 Q: On Exhibit Number 19, why did you put -- there is a,

6 looks like a satellite with a line drawn. What is

7 that?

8 A: That's a power pole.

9 Q: Okay. That little black circle with a -- yeah. Okay.

10 And there's a line drawn from that, crossing over the

11 easement?

12 A: That's correct.

13 Q: Okay. And what is -- what does that line represent?

14 A: That represents an electrical overhead utility

15 easement, as the legend states.

16 Q: Okay. Is that the center line, based on your survey,

17 of that power line?

18 A: That's correct.

19 Q: Okay. Do you know what the width of that power line

20 is?

21 A: No, sir, it's not described. Typically it's, you

22 know, ten feet.

23 Q: What if I told you it was 20, would that be ---

24 A: Total?

25 Q: Yeah, if you look at -- the Woodtrail plat, it

1 identifies it being 20 feet.
2 A: That's correct.
3 Q: Okay. Would you call that a monument?
4 A: No.
5 Q: You wouldn't. What would you call that?
6 A: An improvement.
7 Q: Okay. And assuming that that improvement has not been
8 moved since 1976, it's in the same place, assuming
9 that, why did you put whatever that circle is by that
10 center line of the power line; why'd you put that
11 there?
12 A: This circle?
13 Q: Yes, sir.
14 A: We placed an iron pin at that point.
15 Q: Why?
16 A: It's a witness iron pin to the property line.
17 Q: But why?
18 A: Because we couldn't set one that was further into the
19 ---
20 Q: But why'd you put it there as compared to some other
21 place?
22 A: It's on-line with all of the reference plats.
23 Q: Okay. And what you're talking about when you say
24 reference plats, is it not true that where that stake
25 is, if you look off to the -- away from the Drasites'

1 house, but look the other way, there's a fence over
2 here on the neighbor's property, correct?
3 A: That's correct.
4 Q: Okay. Did you put that iron there because of that
5 fence, or is that one of the reasons?
6 A: No, sir.
7 Q: What does that fence signify to you?
8 A: It's an improvement that identifies -- it's along the
9 property line.
10 Q: All right, let me ask you this: Does the power company
11 allow fences in the 360 contour?
12 A: I don't know.
13 MR. SMITH: (Inaudible.)
14 Q: You don't know?
15 THE COURT: Hold on a second, hold on a second. Who said
16 that?
17 MR. SMITH: Sorry.
18 THE COURT: No, who said it? You said that?
19 MR. SMITH: Yes.
20 THE COURT: What's your name, sir?
21 MR. SMITH: Smith, Larry.
22 THE COURT: Okay, you're going to get a chance to testify.
23 MR. SMITH: I'm sorry.
24 THE COURT: Okay, hold your comments until you get called.
25 A: It would be an encroachment if it was.

1 Q: Okay. An encroachment in the power company's area?
2 A: That's correct.
3 Q: Okay. And there was a fence there?
4 A: That's correct.
5 Q: That could very well be a separation between the
6 person's lot they were conveyed in the 360 contour; is
7 it not? Could be?
8 A: There's a lot of could-be's.
9 Q: But that's one of the could-be's?
10 A: Right.
11 Q: Okay. All right. But again, if you didn't put it
12 there because of the fence, why -- did you put it
13 there because the power line was there?
14 A: No.
15 Q: Okay. All right. Look at the -- why'd you put it
16 there then? I'm confused on that.
17 A: I put it there, I drove it there myself.
18 Q: Right.
19 A: I put it there because it was a good place to place an
20 iron pin, a witness iron pin on a property line
21 because I couldn't set one that would be out in the
22 water in the mud.
23 Q: Okay. And just in -- and that pin also lines up
24 almost with the retaining wall, which is on the other
25 side of the 20-foot easement, which is a retaining

1 wall on Mr. Drasites' property; is that correct?
2 A: I wouldn't know that.
3 Q: Okay.
4 A: Just looking at it graphically, it's inside of the
5 retaining wall.
6 Q: All right. But you did, on your Exhibit Number 19,
7 show a retaining wall ---
8 A: That's right.
9 Q: --- across from the stake? So what we've got here is,
10 we've got the power line center line, we've got a
11 fence over here on this side, and we've got a
12 retaining wall over here on the other side, correct?
13 A: That's correct.
14 Q: Okay.. And if you'll look at the Woodtrail plat and
15 see the location of the power line on the Woodtrail
16 plat, is it not true that the power line on the
17 Woodtrail plat is at the very -- the outer edge of the
18 power line on the Woodtrail plat -- when I say the
19 outer edge, if this is the center line -- this is the
20 center line, I'm talking about ---
21 A: Right.
22 Q: Isn't that, that outer edge of the 20-foot easement,
23 the 10 foot on that side, right there at the end of
24 the easement?
25 A: Because of scale it's very difficult to ---

1 Q: Well, look at it.

2 A: I am.

3 Q: Okay. Right there, that outer line says "SCE&G
4 easement," it crosses right there at the end of that
5 easement is what it does in my opinion. You're not
6 comfortable saying that's true or what?

7 A: I'm not comfortable saying that's true.

8 Q: Okay. All right. So we're talking about -- just
9 assuming I'm correct, we've got a ten-foot area here.
10 On your stake you put down, you got 24 feet going out
11 towards the water.

12 A: That's correct.

13 Q: That power line, you've got center line right there.
14 So the outer edge of that power line would be ten feet
15 from that stake; would it not? The outer edge of that
16 power line would be ten feet from that stake that you
17 put down for some reason.

18 A: If that's the correct width of that easement.

19 Q: Okay. Do you consider the retaining wall a monument?

20 A: No.

21 Q: Okay. In making your decision about where the 360
22 contour was ---

23 **MR. DAVIS:** I need the Bostick elevation.

24 Q: Let me show you a plat done for Mr. Drasites. This
25 one is by Carl Bostick, dated December 15, 1997. Have

1 you ever seen that plat?

2 A: I have.

3 Q: Okay. And am I correct, it was a December 15, '97,
4 plat?

5 A: That's correct.

6 Q: Okay. And as, for lack of a better terminology, I'd
7 call it an elevation plat, to determine elevations.
8 Am I correct?

9 A: He shows elevations on it. He doesn't really identify
10 that it's a ---

11 Q: Okay. But he shows elevations on it?

12 A: Right.

13 Q: And does he show the 360 elevation on that plat?

14 A: He does.

15 Q: And do you know when the excavation was done on Lake
16 Murray for Mr. Drasites and his neighbor, Mr. Bullock?

17 A: I wasn't there, no.

18 Q: You don't know?

19 A: I did see a permit somewhere along the way, but that
20 doesn't indicate when it was completed.

21 Q: Okay. Assuming that what I'm about to tell you is an
22 accurate statement, if it was done in December of
23 1998, then this plat was done prior to the excavation
24 being done, assuming what I told you is correct; is
25 that right?

1 A: According to the date on this survey.

2 Q: Okay.

3 A: It's unsigned.

4 Q: Okay. All right. And, again, does this plat show
5 where the 360 elevation is on that plat?

6 A: It shows the 360 contour line, yes, sir.

7 Q: It does. And can you mark that, if I can borrow the
8 court reporter's pen, mark on this plat where that may
9 be?

10 COURT REPORTER: Do you want a color?

11 MR. DAVIS: That'd be good, this color. Thank you.

12 A: (Witness complies.)

13 Q: Okay.

14 MR. DAVIS: Thank you.

15 Q: Knowing that what Mr. Duncan has in his chain of title
16 is the easement and the Doug Platt plat showing no
17 easement, and he has one other plat that shows the lot
18 and an easement with no reference plats identifying
19 the length -- the length of the easement or the
20 location of the easement, are you comfortable yourself
21 as a surveyor to say that that survey done by Site
22 Consultants was appropriate? To identify the length
23 and the location of the 360 contour?

24 A: Yes.

25 Q: And why do you say that?

1 A: They found an iron pin there, the distances are
2 reflected, even back to the Civil Engineering plat,
3 prior to the Site Consultant plat.

4 Q: But the Civil Engineering plat, and no other plat, was
5 used to identify the information that you just
6 testified to; is that correct?

7 A: Repeat that?

8 Q: They -- no plat was referenced to identify the
9 information that you just testified to as to the
10 accuracy of that plat. Where is the -- my question to
11 you -- strike what I said before. My question to you
12 is, where is the information that identifies the
13 length of that easement and that contour besides you
14 saying that he found a stake, based on that -- he
15 found a stake? So, where is the information that
16 proves where that length of that easement is and that
17 contour is?

18 A: It's at the 360 contour line.

19 Q: Right. And where -- if you had done that plat, would
20 you have referenced the material -- referenced the
21 existing plat, such as Woodtrail, to identify the
22 length and the location of that 360 contour?

23 A: If it was available.

24 Q: Okay. And in this case, it was available of being of
25 public record; is that not true?

1 A: In my possession.

2 Q: Okay. But it was of public information?

3 A: That's correct.

4 Q: And you do check yourself on your plats to see what's
5 of public record; do you not?

6 A: We do.

7 Q: Okay. All right. Having said what I said, do you
8 think there's an ambiguity -- I'm only talking about
9 based on the plaintiff's documents, as to the
10 ownership they have? That's the easement, the Doug
11 Platt plat, as well as the Site Consultant plat, is
12 there ambiguity in that easement as to the location of
13 the 360 contour?

14 A: No.

15 Q: Okay. Thank you, sir.

16 MR. DAVIS: No more questions, Your Honor.

17 THE COURT: Any re-direct?

18 MR. TIGHE: Yeah, just a few.

19 MR. JOHNS - RE-DIRECT EXAMINATION BY MR. TIGHE:

20 Q: Now, the Woodtrail plat that Mr. Davis referred to,
21 which is -- we've got another one of them right here.
22 Would you have consulted this if it was not in the
23 chain of title to either of these lots? This is the
24 one that he was showing you the road on.

25 MR. TIGHE: Is it admitted? Did you admit that?

1 MR. DAVIS: Woodtrail.
2 MR. STANLEY: It's not one of our exhibits.
3 MR. DAVIS: It's one of mine.
4 A: Yes, if it was available, I would have -- I would
5 review it.
6 Q: Would you have found it if it were not in the chain of
7 title to either of these properties?
8 A: Not necessarily, no, sir.
9 Q: Okay. Now, I'm going to hand you Plaintiffs' Two,
10 which is the deed to Mr. and Mrs. Drasites.
11 A: Okay.
12 Q: Does it refer to a subdivision survey?
13 A: It does.
14 Q: And what survey does it refer to?
15 A: Silver Point Cove subdivision by CTH Surveyors, dated
16 April 3rd, 1995; revised April 25th, 1996, I believe.
17 Q: Is that Plaintiffs' Exhibit Three? Is that the plat
18 that's referred to in the Drasites deed?
19 A: Yes, sir.
20 Q: And does it show the easement that is at issue in this
21 case on the Drasites' lot?
22 A: That's correct.
23 Q: And does it show it running the entire length of the
24 Drasites' side lot line?
25 A: That's correct, yes.

1 Q: And does the Drasites' deed, Plaintiffs' Two, refer to
2 yet another plat that does not appear to have been
3 recorded at that time? Look down here in the
4 description.

5 A: It refers to a deed book.

6 Q: "Further shown on a plat prepared for Roy and
7 Elizabeth by CTH," see that?

8 A: Yes, sir.

9 Q: What date does that plat bear? Does it say?

10 A: August the 9th, 1995.

11 Q: Okay. I'm handing you Plaintiffs' 22, and I ask you
12 if this appears to be that plat.

13 A: That's correct.

14 Q: And does it show the easement in question?

15 A: It does.

16 Q: And does it show it going the entire length of the
17 Drasites' lot line?

18 A: Yes, sir, it does.

19 THE COURT: What year is that plat again?

20 MR. TIGHE: This plat is one that was referred to in the
21 Drasites' deed.

22 THE COURT: Okay. What year was it?

23 MR. TIGHE: Oh, that was when he bought the property.

24 A: 1995.

25 MR. TIGHE: 1995, when they bought the property.

1 THE COURT: 1995?

2 MR. TIGHE: Yeah, when Mr. Drasites bought the property.

3 THE COURT: Thank you.

4 MR. TIGHE: And this is the subdivision plat that was

5 referred to in that deed -- in that book as well.

6 THE COURT: What year was that?

7 MR. TIGHE: This one was done prior to the Drasites' deed.

8 It's probably -- let me see if I can find the date for

9 you. '95.

10 THE COURT: Okay.

11 MR. TIGHE: And it's referred to as the subdivision plat

12 in the Drasites' deed. And this is their lot plat.

13 THE COURT: Okay.

14 MR. TIGHE: Both of them show the easement in question.

15 THE COURT: All right.

16 Q: Now, looking at what's been referred to as the

17 Woodtrail plat, isn't it true that this is not the

18 subdivision plat from which Mr. Drasites' lot was

19 drawn? You can look at the configuration of his lot.

20 A: That's correct, yes.

21 Q: But it does show the Case lot correctly, doesn't it?

22 A: It does.

23 Q: Thank you very much.

24 MR. TIGHE: I have no further questions, Your Honor.

25 MR. DAVIS: Two or three recross?

1 THE COURT: Yes, sir, Mr. Davis.

2 MR. JOHNS - RECROSS-EXAMINATION BY MR. DAVIS:

3 Q: Mr. Johns, the various surveys that counsel for the
4 plaintiff gave to you were, excluding the Woodtrail
5 plat, the various plats that counsel gave to you were
6 plats of the Drasites' property, showing the Drasites'
7 property; was it not? They were plats that had been
8 in the Drasites' chain of title?

9 A: Yes.

10 Q: Okay. If you're going to establish the ownership by
11 the plaintiff, am I not correct that you wouldn't be
12 establishing his easement rights based on deeds from
13 Mr. Drasites; you would be establishing on deeds from
14 Woodberry Utilities into Mr. Case, so you'd have to
15 look at the plaintiff's chain of title, not the
16 defendant's chain of title, to establish the easement
17 rights of the plaintiff; would you not?

18 A: They would all be looked at as a whole. Because they
19 were all available at that time.

20 Q: All right. Let me ask you this question, and maybe
21 you can answer as a surveyor. The only rights anybody
22 has here to that easement would be those that were
23 granted by Woodberry to Case; am I correct?

24 A: I would assume it would go to anybody ---

25 Q: Thereafter?

1 A: --- thereafter.

2 Q: But what Number Two got and Number Three got would be
3 based on what Number One granted to Mr. Case; am I not
4 correct?

5 A: Yes.

6 Q: So, in other words, Number Three and Number Two, I
7 don't care what their deeds say, they don't have any
8 more than what Mr. Woodberry granted to Mr. Case in
9 that original easement; is that not fair?

10 A: That was the original grant.

11 Q: Okay. All right.

12 **THE COURT:** Hold on a second. I always allow one re-
13 direct and one recross. So I think maybe that's
14 enough.

15 **MR. TIGHE:** Okay.

16 **THE COURT:** Except -- you're not even finished, are you?

17 **MR. DAVIS:** Not quite.

18 **THE COURT:** Okay, go ahead.

19 Q: Counsel for the plaintiff asked you about the
20 Woodtrail plat. Is it not true that the Woodtrail
21 plat not only shows the Case property, but it shows
22 the easement having the same length as the Site
23 Consultants plat? Do you know?

24 A: It was the ---

25 Q: Woodtrail, the subdivision plat.

1 A: By Civil Engineering?

2 Q: Yes.

3 A: Yes.

4 Q: Okay. All right. That's all I have.

5 **MR. JOHNS - EXAMINATION BY THE COURT:**

6 **THE COURT:** All right. Sometimes in non-jury cases the
7 judge will ask questions. And please bear with me
8 because I'm being conscious of the record, somebody
9 reading. Depending on how I rule, this may be on
10 appeal. So somebody reading the record won't know
11 what we're talking about necessarily, and some of my
12 questions might seem obvious or irrelevant. Please
13 bear with me a minute. I want to know a little bit
14 about the history of Lake Murray. Okay, now, I
15 remember -- I grew up in Columbia, so I know Lake
16 Murray's a manmade lake. All right.

17 A: Correct.

18 **THE COURT:** Do you remember when it was created? They
19 dammed the Saluda River, is that the river?

20 **MR. DAVIS:** 1929.

21 **THE COURT:** In 1929. I mean, well that's not -- that's
22 not your testimony, that's Mr. Davis' testimony.

23 **MR. DAVIS:** I'm sorry. I apologize.

24 **THE COURT:** No, we can't go by him because he's not a ---

25 A: That's correct. As I understand it, in the '30s was

1 my recollection.

2 **THE COURT:** Mr. Davis also said something in chambers that
3 got me thinking. Now, sometimes in cases like this I
4 would actually go out and look at the premises. He
5 said that the dirt road is no longer there. Is that
6 true?

7 A: That's correct.

8 **THE COURT:** It's covered by water?

9 A: I have no -- that being in the past, I -- there's no
10 evidence there's a dirt road there.

11 **THE COURT:** Okay. Because Mr. Davis said in chambers, he
12 said it was covered -- it was under water so that's
13 why nobody could see it. But you don't, you don't
14 know -- you don't know if it's there or not though is
15 what you're saying?

16 A: No, sir.

17 **THE COURT:** Okay.

18 A: There's no evidence that -- physically or otherwise.

19 **THE COURT:** Except it's on some of these plats though?

20 A: They mention -- it's taken from a tax map. Whether it
21 was there at that time, I have no idea.

22 **THE COURT:** Uh-huh. And so my question is -- and again,
23 keep in mind I'm a lay person so you're teaching me,
24 and all those surveys you testified about, you're
25 teaching me a little bit about y'all's business. But

1 over the years, and again, I know, living in Columbia,
2 that the lake levels go up and down over the years for
3 whatever reason. One time they drained the whole
4 thing just about, didn't they?

5 A: That's correct.

6 **THE COURT:** To repair the dam. What happens to your
7 survey or the plats if the lake level changes? For
8 example, does that eliminate what your conclusions
9 would be? Would that change your conclusions?

10 A: No, sir.

11 **THE COURT:** It would not?

12 A: No, sir.

13 **THE COURT:** Okay. Okay. Thank you so much. Watch your
14 step coming down, sir. Okay, Mr. Tighe?

15 **MR. STANLEY:** Your Honor, we'd like to call Larry Smith.

16 **THE COURT:** Okay. Mr. Smith?

17 (Witness is sworn.)

18 **MR. SMITH:** First, Your Honor, I'd like to apologize for
19 speaking out. It just came out.

20 **THE COURT:** No problems, I understand.

21 **Larry Smith, being duly sworn, testifies as follows:**

22 **MR. SMITH - DIRECT EXAMINATION BY MR. STANLEY:**

23 Q: Good morning, Mr. Smith. Can you state your name for
24 the record, please?

25 A: Larry W. Smith.

1 Q: And where do you live right now?
2 A: 457 Mill Spring Road in Lexington.
3 Q: What's some of your education background?
4 A: Well, I finished high school in Liberty. Went to take
5 courses at Georgia Southern, a few courses at Georgia
6 Tech. Had a engineer professor, used to be, years and
7 years ago, R.E. Bell, when I went to work at the power
8 company in '56, to teach what he could to me about
9 surveying and engineering.
10 Q: And after high school and Georgia Southern, did you go
11 into the work force?
12 A: I went to work for the power company in January of
13 '56.
14 Q: What were you doing for the power company?
15 A: I helped get Lake Murray dam built and the steam
16 plant, and then from that I stayed on construction
17 until '62. Then from '62 to '69 I did all the fringe
18 land surveying on Lake Murray for the power company.
19 And from then on I've still been doing fringe land
20 survey for the power company since I formed my
21 business in 1971.
22 Q: And are you a registered land surveyor?
23 A: Yes, sir.
24 Q: When did you become a surveyor?
25 A: 1969.

1 Q: And how long have you been surveying property in
2 total?

3 A: I actually started in '64 doing -- actually I started
4 doing boundary surveys in '64 for the power company.

5 MR. STANLEY: Your Honor, we'd like to offer Mr. Smith as
6 an expert in the field of surveying.

7 THE COURT: Okay. Mr. Davis?

8 MR. DAVIS: No objection.

9 THE COURT: No objection? All right, your motion's
10 granted, Mr. Stanley.

11 Q: Mr. Smith, were you retained in some way in this case?

12 A: I guess I was named by two of my surveyor friends,
13 Carl Bostick and Dennis Johns, to -- as to if the
14 gentleman had rights to get to the lake. And that
15 was, far as I was concerned, that's what my role was.

16 Q: And when you say the gentleman, you mean by client,
17 Mr. Duncan?

18 A: Yes, sir.

19 Q: And that's pursuant to the easement? Have you
20 reviewed an easement grant?

21 A: Yes, sir. I reviewed plats -- easement grants in 1970
22 -- just one second.

23 Q: I'm showing you Plaintiffs' One. Is this the easement
24 that you've reviewed?

25 A: That is correct.

1 Q: Okay. And can you tell me what that says?

2 A: It says, "Non-exclusive rights with ingress and egress
3 over a 20-foot shelf of land running in a
4 southwesterly direction along the southeastern side of
5 Tract A and extending from the front line of Jay Clark
6 Case to the 360 degree contour of Lake Murray."

7 Q: What other documents did you review, if any?

8 A: I used a plat that was done by Civil Engineering in
9 1981. I did a review of the plat by Douglas Platt,
10 1978. Called for one in '76, but did not have that
11 plat in '76 that Doug did. I did a plat that Site
12 Consultants did in 1988; two plats by CTH, Tommy
13 Hickson, in 1995; a plat by Hussey Gay Bell and
14 DeYoung in 1995; plats by Carl Bostick in 2006, 2009,
15 2014; and plats by Dennis Johns.

16 Q: Looking at Plaintiffs' Exhibit 26, is that your
17 signature on the second page there?

18 A: Yes, it is.

19 Q: The numbered one through 12, are those the items that
20 you reviewed as well?

21 A: Yes, it is. But I also reviewed an item from -- which
22 was not furnished to me by the power company -- from
23 the power company.

24 Q: What item was that?

25 A: Well, when the power company sold the property to a

1 Mrs. Betty Thompson in 1960.

2 Q: And what did that document show?

3 A: It showed the fringe land of PBL and the 360 contour.
4 She bought 1.26 acres from the power company.

5 **THE COURT:** I'm sorry, what's PBL mean?

6 A: PBL is the project boundary line on Lake Murray. Most
7 places in the upper Saluda River, the PBL was say at
8 elevation 385 or 375. In the lower Saluda, it dropped
9 down to 360 or 370. In some cases around near Lake
10 Murray the PBL was 362 contour. The lake was actually
11 designed for the high water mark to be 362. The
12 federal power commission, years ago, made them decide
13 that they couldn't back the water up to 362, so it was
14 -- then the 360 contour became the high water mark for
15 Lake Murray.

16 **THE COURT:** Okay, thank you. I'm sorry, Mr. Stanley.

17 **MR. STANLEY:** Oh, you're fine. Thank you, Your Honor.

18 Q: Exhibit Nine and Ten, have you reviewed those?

19 A: Yes.

20 Q: Are those -- is that the document you're referring to
21 where the power company conveyed the fringe land back
22 to Ms. Thompson?

23 A: That is correct. Parcel A, B and C that Mrs. Thompson
24 got.

25 Q: And looking at Nine and Ten, do you know which way

1 north is on Ten?

2 A: Shows north straight up the page.

3 Q: Okay. Is either one of these Mr. Drasites' property?

4 A: Well, the problem down here at the bottom is where the

5 360 and the PBL. If you'll notice, this plat -- if

6 you'll get the subdivision plat, the PBL and the 360

7 almost coincide with each other.

8 Q: And when you say the subdivision plat, are you looking

9 for the subdivision ---

10 A: The plat by Civil Engineering, 1981.

11 Q: Is this the subdivision plat you're referring to?

12 A: That's correct.

13 Q: And looking at Ten, and then the Woodtrail subdivision

14 plat, can you tell me where this land is?

15 A: This lot here's Mr. Duncan's lot. Here's the easement

16 coming to the 360 contour. This line here, which is -

17 - says North 55/35, it looks like, is the PBL line for

18 the power company. This line here is also the 360

19 line by the power company. If you'll notice, this

20 here comes, turns left, comes across here. This is

21 what, this is what Mrs. Thompson bought, B and C, in

22 1960 from the power company.

23 Q: So in 1960 did she own anything beneath the 360

24 contour?

25 A: No. The deed says, when it was granted that he was

1 granting an easement of his property along the
2 property line from whoever's Mr. Case's property to
3 the 360, which is now the power company's property.

4 Q: So is it safe to say to a reasonable degree -- what's
5 your opinion as to where the easement goes, to a
6 reasonable degree of ---

7 A: Well, the easement goes to where actually the 360 was
8 in 19- -- whenever he bought the property. He could ✓
9 not give an easement beyond the 360. He would have --
10 if the power company required an easement to somebody
11 beyond the 360, however -- working for the power
12 company and on Lake Murray, once you buy the fringe
13 land, everything inside the fringe land and from the
14 fringe land, you would have an easement to get to the
15 water. Though the water, as the judge said a little
16 while ago that it fluctuates.

17 Q: And when you say the fringe land, are you referring to
18 the ---

19 A: Anything below the PBL, project boundary line, to the
20 360 is known as fringe land. Now, there is cases
21 where the power company had -- did not buy the
22 property, they just got water rights over the
23 property. But his property stops at the 360. This
24 was not water rights property.

25 Q: Based on everything you've looked at, do you have an

1 opinion as to what the easement's purpose was?

2 **MR. DAVIS:** Objection, Your Honor.

3 **THE COURT:** What grounds?

4 **MR. DAVIS:** A legal conclusion. A legal conclusion would

5 be the Court's decision on that. And he's a surveyor

6 and not a lawyer.

7 **THE COURT:** All right, what was the question again? Don't

8 answer yet, sir.

9 **MR. STANLEY:** Does he have an opinion as to where the --

10 maybe I should rephrase it.

11 **MR. DAVIS:** Okay.

12 Q: Do you have an opinion as to where the easement goes?

13 A: Goes to the ---

14 **MR. DAVIS:** Objection. Same objection.

15 **THE COURT:** All right. Objection overruled.

16 **MR. DAVIS:** Okay.

17 A: My experience doing land surveying all around the

18 lake, the water -- the easement went to the lake.

19 Q: Would that be consistent with the purpose of getting

20 to the lake?

21 A: Well, it's the purpose, to me. As the experience

22 around the lake, that was the -- that was the only

23 purpose, was to get to the lake.

24 Q: Answer any questions Mr. Davis might have.

25 **THE COURT:** Okay. Mr. Davis?

1 MR. DAVIS: Okay.

2 MR. SMITH - CROSS-EXAMINATION BY MR. DAVIS:

3 Q: As you testified, the grantor on the easement, he or
4 it could not convey any more than what it did convey,
5 and that's why that easement says 360 contour; is that
6 not true?

7 A: That's correct.

8 Q: Okay. There is no verbiage in that easement that says
9 that the grantor was giving anything to the grantee
10 beyond wherever that 360 contour was at that point; is
11 that not true?

12 A: He couldn't give him anything ---

13 Q: That's not my question. My question to you ---

14 THE COURT: Hold on. Let him finish the answer.

15 MR. DAVIS: Okay, I'm sorry.

16 THE COURT: Go ahead, Mr. Smith, what were you about to
17 say, sir?

18 A: He couldn't give anything beyond the 360 because he
19 didn't own it.

20 Q: All right. I understand that. My question to you is:
21 There is nothing in that easement that indicates
22 anything by that grantor as to any rights granted
23 beyond the 360 contour?

24 A: That's right. That's correct.

25 Q: Okay. All right. So -- and beyond that point of the

1 360, wherever that may have been in 1976, would have
2 been -- come under the power company's jurisdiction?
3 A: That's correct, sir.
4 Q: As to use beyond that point?
5 A: That's correct.
6 Q: Meaning boat docks, boat ramps, excavation, whatever?
7 A: I agree with that.
8 Q: Okay. All right. Now, you testified that on the
9 Woodtrail plat, on the Woodtrail plat -- strike that.
10 Am I not correct that on the Woodtrail plat, that the
11 Case lot is shown?
12 A: Yes, sir.
13 Q: Okay. And also, the easement that's on Mr. Drasites'
14 property is shown?
15 A: Yes, sir.
16 Q: And when you -- and the fringe land you've eloquently
17 testified to about, it's shown on that plat; is it
18 not?
19 A: Yes, sir.
20 Q: And at the end of that fringe land area, which is 112
21 feet, what sits next to the end of that 112 feet?
22 A: Well ---
23 Q: On Mr. Brown's survey of Civil Engineering, what sits
24 there on that plat?
25 A: He shows two things. He shows a power line and he

1 says a road taken from a -- road taken from a tax map.

2 Q: Okay. And what's the point of saying -- why you
3 saying that?

4 A: Well, he didn't say it was there. He said he was
5 taking it from a tax map, which we do every day.

6 Q: And he physically, on this -- are you saying that he
7 put something falsely on this survey?

8 A: No, I'm not saying that.

9 Q: Okay.

10 A: I'm not saying that.

11 Q: He showed a road, did he not?

12 A: Sir, I'm saying that he showed a road by somebody
13 else's thing. He didn't say it was there or not.
14 Well, I don't know if it was there or not. I'm just
15 saying you would have to get Mr. Brown on that.

16 Q: Well, wouldn't it be true then that you can say Mr.
17 Brown also copied the Site Consultants plat, and he
18 showed the easement based on the Site Consultants
19 plat?

20 A: He couldn't copy Site Consultants' plat because Site
21 Consultants was '88 and this is '81.

22 Q: Okay, well, let's take an earlier plat. Let's take
23 the fringe land plat. You could -- using your
24 argument, he could have copied the fringe land plat.

25 A: No, he, he -- he used the fringe land plat to create

1 that.

2 Q: Okay. My question to you: It does show a road ---

3 A: Yes, sir.

4 Q: Physically on that plat it shows a road there?

5 A: It shows a road, yes.

6 Q: And where does it show the lake? Which side of the

7 road is the lake on?

8 A: Only thing on this thing, Mr. Davis, this says Lake

9 Murray, and he shows a line. But everything below the

10 360 is the lake.

11 Q: All right. Let me ask it simply. On this plat done

12 by Mr. Brown, you know who that is?

13 A: Yes, sir, a great friend of mine.

14 Q: Okay. Very good. And it shows the easement, it shows

15 a road area, and it shows the lake beyond that road

16 area; does it not?

17 A: That's correct.

18 Q: That's what Mr. Brown said in 1981.

19 A: Yes, sir.

20 Q: Okay. And that's five years after the easement, true?

21 A: True.

22 Q: Okay. Tell me where in the plaintiff's chain of title

23 there's any better evidence as to what is at the end

24 of that easement.

25 A: Well, as surveyors, we can only go by what is

1 presented before us. There was a plat by the power
2 company, 1960, sold by a distance. Undoubtedly, Civil
3 Engineering, Mr. Brown went in and they did their --
4 retracked the power company's plat in 1960, even
5 though they did it in 1981. In 1988, Site Consultants
6 came in and used the same measurements and the same
7 basically information that Civil Engineering did in
8 1981. Then in 1985, CTH, Tommy Hickman showed the
9 same property line, same distance, everything, twice
10 in 1995. In 1995, why -- five different surveyors was
11 been in there. 1995, Hussey Gay Bell and DeYoung,
12 those folks showed the same easement, same distances,
13 all the way down to the same plat as 1960.

14 Q: Okay. All right, let's do this: we've got the
15 easement given by -- to Mr. Case, says 360 contour.

16 A: Yes.

17 Q: That's 1976. We've got the '81 plat by Woodtrail.
18 It's recorded.

19 A: Yes, sir.

20 Q: Okay. Then we've got the Doug Platt plat that's in
21 the plaintiff's chain of title, true? Doug Platt.

22 A: I think Doug did his first.

23 Q: All right. And it shows just a lot?

24 A: Check.

25 Q: Okay. And then we've got Site Consultants' plat that

1 shows the lot and the easement. But am I fair to say
2 that in the reference material on the Site Consultant
3 plat, there's nothing that that surveyor put on that
4 plat that identified any of the specifics on the
5 easement; is that true?

6 A: He didn't reference -- he didn't -- for some reason or
7 another, he didn't reference everybody, but that
8 doesn't make it -- he had to get the measurements from
9 Mr. Brown's plat because they check.

10 Q: Okay. Why didn't he reference that?

11 A: I wouldn't have the slightest idea.

12 Q: Okay. All right. So let's just say we've got an
13 easement, we've got Doug Platt, we've got Site
14 Consultants, and we've got Woodtrail. And somebody
15 comes to you as a surveyor and says, I want you to
16 survey down there in that corner on Mr. Drasites'
17 property. And he asks you this question: When we get
18 down here at the end of the fringe land, and we -- and
19 -- do I have access to the lake, or do I have access
20 to a road that is on this plat in 1981?

21 A: If, if the deed had said he has access to the road, I
22 might agree with you. However, he says he has access
23 to the 360 contour.

24 Q: And what you just said, I agree with you. It says to
25 the 360 contour. And at the end of the 360 contour,

1 in a lot of places, guess what's there? Water. In
2 this situation, there's not water there. There is a
3 road there, and, and the best evidence that it is a
4 road is this plat, which is five years after the
5 easement.

6 A: Ninety percent of the places on Lake Murray there's no
7 water at the 360. The water is always below the 360.

8 Q: I understand that.

9 A: So, but the easement, his easement still goes to the
10 water of Lake Murray, which is 360.

11 Q: We're looking at 1981. What was at the end of that
12 easement? Physically?

13 A: Physically? I don't know.

14 Q: What does that plat show?

15 A: Well, I'm not -- the plat says he took that road from
16 a tax map and ---

17 Q: Okay.

18 A: --- what is a tax map?

19 Q: If you --

20 A: We have problems with tax maps every day.

21 Q: If you don't see a road there, just tell me that.

22 A: Well, there's an indication of a road.

23 Q: Okay, very good. That's all I need to know.

24 A: All right.

25 Q: Just one second. Do you ---

1 A: May I say something else, Your Honor?

2 **THE COURT:** I'll give you a chance later on. Right now
3 you have to answer his questions.

4 Q: When people do excavation on Lake Murray, do they
5 normally put retaining walls at 360 contour, do you
6 know?

7 A: I can't answer that.

8 Q: Don't know?

9 A: Don't know that, sir.

10 Q: Okay. All right.

11 **MR. DAVIS:** Your Honor, give me one second, just let me
12 think for a second.

13 **THE COURT:** Yes, sir.

14 **MR. DAVIS:** I believe that's all I have.

15 **THE COURT:** All right. Any re-direct, Mr. Stanley?

16 **MR. STANLEY:** Yes, Your Honor.

17 **MR. SMITH - RE-DIRECT EXAMINATION BY MR. STANLEY:**

18 Q: Based on all your experience with the lake and the
19 fringe land and surveying, is it more likely the
20 easement goes to a road or to the lake?

21 A: It says it goes to the 360 contour, and the 360
22 contour is the lake. The road never did show up on
23 anybody else's plat.

24 Q: Is there a reason why that would be?

25 A: Undoubtedly it wasn't there.

1 MR. STANLEY: That's all we have.

2 THE COURT: Okay. Mr. Davis, recross?

3 MR. SMITH - RECROSS-EXAMINATION BY MR. DAVIS:

4 Q: Well, what do you mean, it wasn't there?

5 A: I said undoubtedly it wasn't there, nobody else showed
6 it.

7 Q: But this plat, five years after the easement, does
8 show a road there?

9 A: Yes, it shows a road.

10 Q: And that road -- I'm sorry, you were talking.

11 A: It says he's taken it from something.

12 Q: And that road goes from the end of the fringe land,
13 runs along the edge of the subdivision, and ties in to
14 an existing public road; does it not?

15 A: That is correct.

16 Q: Okay. Thank you.

17 A: 1960, the fringe land plat doesn't show a road.

18 Q: But my question is, this road, dirt road, as you said
19 it is, tied into a public road. That could mean that
20 that easement provided a more, a quicker access to a
21 public road, for example?

22 A: That's not my opinion, that's not my ---

23 Q: Okay. But when you look at the easement, it could be
24 multiple reasons.

25 A: Could be.

1 Q: Could be. And the reason we don't know is because it
2 doesn't say. But we know what this plat says, don't
3 we?

4 A: We know what the deed says ---

5 Q: Thank you, sir.

6 **MR. SMITH - EXAMINATION BY THE COURT:**

7 **THE COURT:** Okay. Mr. Smith, you said you wanted to say
8 something else earlier?

9 A: I was just going to repeat that the road -- we take
10 things off of tax maps sometimes. For instance, the
11 100-year flood line shows on FEMA plats. We have no
12 earthly idea where that 100-year flood line is. And
13 the flood line on those things is ---

14 **THE COURT:** Let me stop you again. For somebody who
15 doesn't know, what is FEMA?

16 A: You know ---

17 **THE COURT:** Yeah, I know what FEMA is. But could you
18 explain for the record what ---

19 A: Well, the 100-year flood -- FEMA puts out ---

20 **THE COURT:** No, what is FEMA?

21 A: Well ---

22 **THE COURT:** Federal Emergency ---

23 A: Federal Emergency -- I don't know exactly how they're
24 ---

25 **MR. TIGHE:** Management Agency.

1 A: --- Management Area, or something like that.

2 **THE COURT:** Okay.

3 **MR. DAVIS:** I agree.

4 A: Anyway, they put out a drawing and it's shaded. And
5 they say that's the 100-year flood. However, they
6 also put out a known elevation for that same place.
7 And the known elevation may not be nowhere close to
8 where that 100-year flood line on their drawing. So
9 as surveyors, we put that line on the drawing as per
10 FEMA map so and so. I'm not saying that's not the
11 case here, I'm just saying he said he took it off a
12 tax map.

13 **THE COURT:** Okay. Now, let me ask you, you said something
14 that got me intrigued. You said you have problems
15 with tax maps all the time.

16 A: Yes, sir.

17 **THE COURT:** Now, why is that?

18 A: Think about this, Your Honor.

19 **THE COURT:** Okay.

20 A: We had bad surveyors. We had bad surveys for years.
21 As you -- as a draft person for the county, you get a
22 survey from Old Larry, and he doesn't have a good
23 reputation. His plats may say 100 feet, and it may be
24 110 or it may be 80. In South Carolina we did not
25 have any laws governing a surveyor, what accuracy he

1 had to do, until 1976. So you take Old Larry's plats
2 that are no good, and you take Mr. Johns' plats is
3 excellent, and you try to put them together. All of a
4 sudden you've got a gap or overlap. So you can't
5 blame the tax people. They'll tell you right quick,
6 we do the best we can, just don't use our lines for
7 your legal tax -- or your legal survey.

8 **THE COURT:** The reason that intrigues me I guess is that
9 we frequently in this court will get actions to close
10 roads, and come to find out the road never was there.
11 It's on a plat and, you know, a proposed road that
12 never got built. And I wondered if this dirt road is
13 like that, but -- and that's why at the outset I said
14 I wanted somebody who was around in 1981 or 1976 to
15 tell me if there was ever a road there or if it was
16 just on paper. That was what I'm driving at. But I
17 appreciate your help. Any other -- I guess no other
18 questions. Thank you, sir, you can come down. Watch
19 your step coming down. Let's take a break until about
20 12:40 and then we'll -- yes, sir?

21 **MR. SMITH:** Your Honor, can I be excused?

22 **THE COURT:** Okay. Mr. Tighe?

23 **MR. TIGHE:** Yes, sir.

24 **MR. DAVIS:** Yes, Your Honor.

25 **THE COURT:** All right. Thank you, Mr. Smith. And we'll

1 take your next witness. And then after that witness
2 we may -- that'll be a good time to break for lunch,
3 or we may break for lunch before then.

4 **MR. DAVIS:** Okay.

5 **THE COURT:** Yeah. Let's stand in recess until about
6 12:40.

7 (Off the record from 12:23 p.m. to 12:39 p.m.)

8 **THE COURT:** Okay, Mr. Tighe?

9 **MR. TIGHE:** Subject to Your Honor's offer to let us put
10 Mr. Duncan on the stand within the next 15 days, the
11 plaintiff rests.

12 **THE COURT:** Okay. All right. Mr. Davis?

13 **MR. DAVIS:** Your Honor, the plaintiff moves for a non-
14 suit. The defendant, I apologize, moves for a non-
15 suit on the basis of the fact that the -- based on the
16 evidence presented by the plaintiff, that what they've
17 proven is that there is an easement grant, 20 feet in
18 width, to a 360 contour. And the only credible
19 evidence in this case at this moment, presented by the
20 plaintiff, is at the end of that easement is a dirt
21 road shown on a plat that's recorded and done by Civil
22 Engineering. And that because there's a road there,
23 then the purpose that the plaintiff is seeking for an
24 easement really is not in the realm of possibility for
25 what the purpose of the easement was, the intent.

1 **THE COURT:** Let me ask you, Mr. Davis, is the road there
2 or not? I mean ---

3 **MR. DAVIS:** There will be testimony by Mr. Drasites ---

4 **THE COURT:** I mean, if I went out there this afternoon,
5 for example, looking for it, will I see a dirt road?

6 **MR. DAVIS:** Yes, sir.

7 **THE COURT:** All right. I'm sorry, go ahead. I
8 interrupted your argument.

9 **MR. DAVIS:** And there is no other credible evidence at
10 this moment to show that the intent -- there's nothing
11 to show intent for access to the lake because the lake
12 wasn't there. And the earliest plat is a 1981 plat.
13 That's five years after the easement grant. And the
14 other thing is, the easement grant doesn't even have a
15 plat or a survey to show where it was going. It's an
16 ambiguity. And because there is an ambiguity, we
17 should not be penalized, Mr. Drasites should not be
18 penalized. They drew -- their predecessor in title
19 drew the document and they created the ambiguity, and
20 that should go against them as to try and argue what
21 their grant is, lake access. But even the easement
22 doesn't say lake access. It says 360 contour, and the
23 reason it says that is because that's all the grantor
24 had to give.

25 **THE COURT:** Okay. Mr. Tighe?

1 **MR. TIGHE:** Your Honor, the position that the defendant
2 has advanced so far in his cross-examination seems
3 inconsistent to me with any ruling in his favor. The
4 survey that has already been marked for admission,
5 which is Mr. Bostick's survey, suggests that the 360
6 is inboard, inboard of the lot line. Now, as has been
7 testimony back and forth, nobody can do anything below
8 the 360, wherever that is. And if you -- to take
9 Randy's argument, you would have to ignore the fact
10 that the lot line for Mr. Drasites' lot is, according
11 to him, beyond the 360. That's what he testified to
12 in his deposition, and that's what Mr. Bostick's
13 survey shows. Now, he can't have it both ways.
14 Either the easement goes to the 360, which cannot be
15 any further out -- I mean, it can't be inboard of the
16 lot line because his lot can't go beyond the 360. So
17 the testimony we've got so far, from Larry Smith and
18 from Dennis Johns, is that the lot line and the 360
19 were very similar at that time and that the easement
20 ran to the end of that lot line.

21 **THE COURT:** Okay.

22 **MR. TIGHE:** And there's, I mean, there's no reason why
23 anybody would want to hook up to a road that is under
24 the 360. You can't go out there. Now, we talk about
25 a lake, you know, a lake -- this lake is defined by

1 the 360, not by where water is, but by the 360.
2 Because, theoretically, there could be water there or
3 not there at any given time.

4 **THE COURT:** All right, Mr. Davis?

5 **MR. DAVIS:** Briefly, Your Honor. On a non-suit, I'm
6 assuming the plaintiff's evidence as to what -- as to
7 the best evidence they have presented at this point,
8 I'm assuming that that is true. The best evidence is,
9 it only carries their easement to where the dirt road
10 is. And that is not lake access and the easement does
11 not say lake access. He only conveyed to the 360
12 contour. So I'm assuming, in the light most favorable
13 to them, based on Mr. Smith and Mr. Johns, it only
14 carried it to the dirt road. And that survey shows --
15 it does show a dirt road. And I believe the law is,
16 if that surveyor puts that road on that plat, he has
17 provided rights to people who abut that road. There's
18 law that deals with that subject. But I would also
19 argue again that the ambiguity in the original
20 documents is the plaintiff's problem and not ours, and
21 we should not be penalized because of ambiguity.

22 **THE COURT:** Okay. Mr. Tighe?

23 **MR. TIGHE:** Please the Court. Two surveyors have
24 testified that the easement runs to the 360, and
25 nobody could go beyond that. If they're suggesting

1 that there's a road out beyond the 360, I think Your
2 Honor should go out and look at the property and see
3 if you see a road out there. And the easement grant
4 itself says to the 360 contour of Lake Murray. It
5 doesn't say 20 feet to a road out in the middle of the
6 lake.

7 **THE COURT:** Mr. Tighe, are you saying there's no road out
8 there? Is that what you're saying?

9 **MR. TIGHE:** Well, I've been there and I've never seen one.
10 I mean, the -- I think you can go out there and look.
11 But as I say, the real question is, is it more likely
12 or not that the easement was granted for the purpose
13 of giving these people access to the lake or to some
14 dirt road out in the middle of the lake. I mean, that
15 makes no sense to me.

16 **THE COURT:** All right. Based -- you know, I think the
17 plaintiff has offered enough evidence to get past a
18 motion for a non-suit, therefore, Mr. Davis, your
19 motion's denied.

20 **MR. DAVIS:** Thank you, Your Honor.

21 **THE COURT:** You can start with your case, or we can go to
22 lunch and come back at two and start your case.

23 **MR. DAVIS:** I've got one witness, then I've got a surveyor
24 this afternoon, if that's okay, after lunch. Is that
25 all right?

1 THE COURT: Yeah, sure.

2 MR. DAVIS: I've got a witness right now.

3 THE COURT: Okay, that's fine.

4 MR. DAVIS: Okay. I call Mr. Tommy Boozer.

5 (Witness is sworn.)

6 Tommy Boozer, being duly sworn, testifies as follows:

7 MR. BOOZER - DIRECT EXAMINATION BY MR. DAVIS:

8 Q: Mr. Boozer, did you bring your file? Do you have
9 your file? Did you bring a file?

10 A: No, I just -- what I gave you.

11 Q: That's it?

12 A: Uh-huh.

13 Q: Okay. All right. If you would, give me your full
14 name.

15 A: Thomas Chappell Boozer.

16 Q: All right. And your occupation?

17 A: Lake management.

18 Q: For?

19 A: South Carolina Electric and Gas Company.

20 Q: And your official title is what?

21 A: The Shoreline Management Manager.

22 Q: Okay. And how long have you had that job?

23 A: About 25 years.

24 Q: Okay. And under that job title, what all do you do?

25 A: We do all the permitting for the people around the

1 lake. We work with the Corps of Engineers. We deal
2 with developments and different activities around
3 the shoreline.

4 Q: Okay. All right. And you've heard the verbiage,
5 the 360 contour thrown around all day long I take
6 it?

7 A: Right. Right.

8 Q: Okay. Who has jurisdiction of property owned below
9 the 360 contour?

10 A: That would be SCE&G.

11 Q: Okay. And what do people have to comply with in
12 regards to dealing with property under the 360 line?

13 A: We have a shoreline management plan that -- and the
14 plan has all the requirements and regulations that
15 we -- that they have to have before we permit a dock
16 or an activity.

17 Q: Okay. Let me show you a copy of this. And I
18 believe we've put it into evidence.

19 MR. TIGHE: We have not.

20 MR. DAVIS: Okay. All right.

21 Q: Let me ask you to identify that.

22 A: That's our Lake Murray Shoreline Management Program.

23 Q: Okay. If you -- and does that document discuss in
24 detail, to potential users of the power company's
25 property below the 360 contour, what the process is?

1 A: It does.

2 Q: Okay. And if you look on the back page, what was
3 the date of implementation of this policy?

4 A: 1975.

5 Q: Okay. So it actually was put into effect a year
6 prior to the easement into Mr. Case; is that not
7 correct?

8 A: That would be correct.

9 Q: Okay. All right.

10 MR. DAVIS: Your Honor, we'd move to introduce this policy
11 of SCE&G.

12 THE COURT: Okay.

13 MR. TIGHE: No objection.

14 THE COURT: All right. Your motion's granted.

15 (Defendants' Exhibit Number Three was entered into the
16 record.)

17 Q: Mr. Boozer, in the plaintiff's lawsuit, the amended
18 complaint, they have asked the Court to grant the
19 plaintiff an easement, a 20-foot easement, and that
20 it would be traversable, the easement, by a vehicle
21 towing a watercraft to the edge of the defendant's
22 property, in the easement, and that the plaintiff be
23 entitled to maintain the easement in such a way that
24 would enable the plaintiff to launch the watercraft
25 from the easement. That's the lawsuit, part of the

1 lawsuit. Okay. Has the plaintiff been to SCE&G,
2 asking for permission to do certain work below the
3 360 contour, where this easement joins Lake Murray?

4 A: We had a request, a permit request, for grading and
5 removing some soil. The SCE&G Shoreline Management
6 Plan doesn't have a permit that would issue
7 removal of soil or disturbance along the
8 shoreline.

9 Q: All right. So what you've testified to is that the
10 plaintiff asked for permission to do some work below
11 the 360 contour, and there's not a permit that is
12 allowed by SCE&G to allow him to do what he wanted?

13 A: Right.

14 Q: Okay. Is he allowed to put a boat dock there?

15 A: No.

16 Q: Is he allowed to put a boat ramp there?

17 A: No.

18 Q: Okay.

19 A: In those situations you have to have 100 feet of
20 shoreline in order to have a dock and a boat ramp.

21 Q: Okay. To have the -- say that again, the last thing
22 again?

23 A: That you have to have 100 feet of shoreline.

24 Q: To do what?

25 A: To put in a boat dock and a boat ramp.

1 Q: Okay. All right. One other question. In this case
2 there was excavation permitted by SCE&G in 1998,
3 late 1998, 1999.
4 A: That's correct.
5 Q: On Mr. Drasites' property, Mr. Bullock's property.
6 All right. There is a retaining wall on Mr.
7 Drasites' property and Mr. Bullock's property.
8 Okay. On the application that was presented to
9 SCE&G, did the application have a plat which showed
10 that a retaining wall was to go in?
11 A: No. We didn't require a plat for where the wall was
12 going.
13 Q: Okay. But was a retaining wall placed on his
14 property?
15 A: It was placed on the 360.
16 Q: The 306 contour?
17 A: Right.
18 Q: Okay. The retaining wall was placed on the 360
19 contour?
20 A: That was my understanding, right.
21 Q: Okay. And what you're testifying to is that that's
22 where the 360 contour was in December 1998, January
23 1999?
24 A: Correct.
25 Q: Okay. All right.

1 MR. DAVIS: Your Honor, may it please the Court just one
2 second?

3 THE COURT: Yes, sir.

4 MR. DAVIS: Okay.

5 Q: Let me show you -- or ask you to identify these
6 documents, and I ask you, what are those documents?

7 A: This is part of the permitting process, issued them
8 a permit to dredge to the Bullocks'.

9 Q: Okay. And that was done when? When was the permit
10 granted?

11 A: I think it was December of '98

12 Q: Okay.

13 A: Should be on here.

14 Q: All right.

15 A: It was 1998.

16 Q: All right.

17 MR. DAVIS: We move that -- what's that, Defendants'
18 exhibit?

19 MR. TIGHE: I'm sorry?

20 MR. DAVIS: We move to introduce that defendant's exhibit.

21 MR. TIGHE: No problem.

22 (Defendants' Exhibit Number Two was entered into the
23 record.)

24 Q: Attached to this Defendants' Number Two exhibit,
25 there's a sketch or a plat; is there not?

1 A: Yes, it is.
2 Q: Okay. And that would have been attached to the
3 application?
4 A: That's correct.
5 Q: Does it have the topo there as to elevation?
6 A: It does.
7 Q: And does it show a 360?
8 A: I'm seeing a 359. I don't see a 360.
9 Q: Okay. How about 361?
10 A: No.
11 Q: Okay. Shows 359?
12 A: Shows 359.
13 Q: Okay. All right. Any work done on this excavation
14 would have been below the 360 contour; is that
15 correct?
16 A: That's correct.
17 Q: Okay.
18 MR. DAVIS: Your Honor, I've got one more document to get
19 my hands on if I could, be just a second.
20 THE COURT: Okay.
21 Q: Let me show you this document and ask you to
22 identify that.
23 A: That's a document that I responded to Mr. Stanley.
24 Q: Okay. And that's what you testified to earlier, as
25 to what you told them that they could or could not

1 do; is that correct?

2 A: That's correct.

3 Q: And it indicates that no boat ramps ---

4 A: No boat ramps ---

5 Q: --- no boat docks.

6 A: --- and no boat docks.

7 Q: No excavation beyond the -- in the 360?

8 A: I don't think he requested a ---

9 Q: What were the words he used?

10 A: He was removing some soil.

11 Q: Okay.

12 A: I think that's what he was talking about.

13 Q: Okay.

14 A: A little bit different than an excavation.

15 Q: Okay. And that letter's dated when?

16 A: June the 30th, 2014.

17 MR. DAVIS: I'd move to introduce that.

18 MR. TIGHE: No problem.

19 THE COURT: All right.

20 (Defendants' Exhibit Number One was entered into the
21 record.)

22 Q: Answer any questions the plaintiff may have.

23 THE COURT: Thank you. Mr. Tighe?

24 MR. BOOZER - CROSS-EXAMINATION BY MR. TIGHE:

25 Q: Mr. Boozer, I'll hand you Plaintiffs' Exhibit Nine

1 and Plaintiffs' Exhibit Ten and ask you to take a
2 minute to look at those.

3 A: That was the parcel of property that SCE&G was
4 selling.

5 Q: I believe it was the fringe lands, wasn't it?

6 A: Fringe lands, right.

7 Q: And this is a survey that shows that, I believe?

8 A: That's correct. It's Parcels A and B and C.

9 Q: And this would be the property at issue in this
10 case, including Mr. Drasites' lot, wouldn't it?

11 A: Yes. Yes, sir.

12 Q: Okay. Now, the subdivision plat -- when the fringe
13 land was deeded back and people developed property
14 including the fringe lands, the outer edge of the
15 fringe lands would normally be the 360 contour?

16 A: That's correct.

17 Q: And if this -- sorry.

18 A: The 360 contour would be where the fringe lands come
19 down to.

20 Q: Right. And so that you'd have the high lands, the
21 fringe lands, and then the 360?

22 A: Correct.

23 Q: And then the lake? Or the property that belonged to
24 the lake?

25 A: Right.

1 Q: And sometimes it would have water in it and
2 sometimes it wouldn't?
3 A: Right.
4 Q: Okay. Now, this is a survey, this is Plaintiffs'
5 Exhibit 17, a survey done by the plaintiff's
6 surveyor. And it shows the boundary line of Mr.
7 Drasites' lot, right here?
8 A: Okay.
9 Q: Now, they also show the 360 contour as being up in
10 here somewhere. See that?
11 A: Uh-huh. Is that -- that's the wall right there?
12 Q: Yeah, that's the wall.
13 A: Yeah.
14 Q: And they've got a note that says 360 right here,
15 right here.
16 A: Right there, on the wall.
17 Q: Yeah. So if you look at this plat, you would have
18 to assume that the boundary line of the lot was
19 further out than the 360, wouldn't you?
20 A: Yes, it would be.
21 Q: And that's not likely, is it?
22 A: No, not -- it's not normal, let me just say that.
23 Q: The -- if the 360 contour is established at the time
24 a subdivision plat is put together, and normally the
25 subdivision lines follow the 360 -- that's true,

1 isn't it?

2 A: Yes, sir.

3 Q: Is it impossible, through erosion, construction, or

4 otherwise, that the contour could be changed to move

5 the 360 contour?

6 A: In some cases. Generally if you have erosion

7 activity it could.

8 Q: And the 360 contour is really just the level of the

9 ground at a given spot, isn't it?

10 A: That's right.

11 Q: And it changes from time to time?

12 A: Well, it changes but it still stays at 360. If you

13 lose property, you still go back to the original

14 360.

15 Q: You still own where it was?

16 A: Right.

17 Q: So if the 360 followed the property line here, that

18 would explain how Mr. Drasites could own property

19 out beyond his seawall, wouldn't it?

20 A: It could be.

21 Q: If the 360 were out here. Is it more likely or

22 unlikely that the 360 would follow the property line

23 rather than be inboard of it 20-some feet?

24 A: Well, it would follow -- what I'm looking at on this

25 right in here is where the 360 contour is, where

1 this arrow goes here, and it also indicates
2 retaining wall.

3 Q: Right.

4 A: So, to me, those two would go together ---

5 Q: Exactly.

6 A: --- and that would be close to the, you know, the
7 360.

8 Q: But that would be the 360 at the time he applied for
9 the permit?

10 A: That's correct.

11 Q: And if the 360 were further out at the time of the
12 subdivision, that would explain why this boundary
13 line is out beyond the 360?

14 A: That's right. And that could happen. That could
15 have been the original line right there, it shows
16 where it goes.

17 Q: Well, this Plaintiffs' Exhibit Three shows Mr.
18 Drasites' lot and it shows the property line out
19 here where you can see it on Mr. Bostick's plat.
20 And it shows this easement running all the way down
21 the property line, doesn't it? This is the 20-foot
22 easement.

23 A: Yeah, that's the easement, right?

24 Q: Yeah.

25 A: Okay.

1 Q: And it shows it going -- this is Mr. Hamilton -- the
2 Duncan property. This is Mr. Drasites' lot. And it
3 shows this easement going from the beginning of ---
4 A: His yard.
5 Q: --- his yard, all the way down to the end of Mr.
6 Drasites' line, doesn't it?
7 A: Right.
8 Q: Would there be any reason to grant an easement that
9 did not go all the way to the lake if it was for
10 lake access purposes?
11 **MR. DAVIS:** Objection, asks for a legal conclusion.
12 **THE COURT:** Objection overruled.
13 A: I'm sorry?
14 **THE COURT:** I overruled his objection.
15 A: Okay.
16 Q: Would there be any reason to grant an easement that
17 goes part of the way to the lake?
18 A: You know, I guess they could grant easements for
19 different things. But normally when we have
20 easements like this, they do go into the lake.
21 Q: And are you familiar with any road being out in
22 here, as shown on the Woodtrail plat, which I'm not
23 sure has been marked, but are you familiar with any
24 road being out here in -- outside of these property
25 lines?

1 A: I can't remember if it was a road there, but I do
2 know there was a power line going across through
3 there.
4 Q: Right.
5 A: And that's what I'm thinking.
6 Q: But you don't know of any road out there, do you?
7 A: I can't remember. I don't think ---
8 Q: Well, if it were beyond the 360 who could use it?
9 A: You talking about right through here?
10 Q: Yeah. Right.
11 A: Well, the water's going to be down through here so -
12 --
13 Q: Right.
14 A: --- you know, they wouldn't have access, you know,
15 there wouldn't be road access through there.
16 Q: Right. But, I mean, if the 360, looking at Mr.
17 Bostick's plat, which is Plaintiffs' 17, it's way up
18 in here.
19 A: Right.
20 Q: This road is down below the 360, isn't it?
21 A: Right.
22 Q: If it exists at all?
23 A: If it exists.
24 Q: And who could use a road below the 360?
25 A: Nobody at that time.

1 Q: Or at any time?

2 A: That's right. Well, if the lake, if the lake came
3 down to -- you know, we brought the lake down, you
4 know, to the 345, so.

5 Q: Y'all would still own the land though?

6 A: We'd still own the land.

7 Q: You have whole under the lake, don't you?

8 A: Villages ---

9 Q: Cemeteries, schools ---

10 A: Schools.

11 Q: So, but I mean, nobody can use those?

12 A: That's correct.

13 Q: And the power company owns all that property ---

14 A: That's correct.

15 Q: --- below the 360?

16 A: Well, not all the property.

17 Q: True. In fact, my lot, they didn't own it.

18 A: That's right.

19 **MR. TIGHE:** I owned a lot at the lake, Your Honor, that
20 went out to the center line of the cove, and they
21 never have gotten the land out.

22 Q: And that happens sometimes. But that doesn't happen
23 in five, ten, 15-foot increments, does it?

24 A: No. No.

25 Q: Thank you. No further questions.

1 THE COURT: All right. Any redirect?

2 MR. DAVIS: Thank you, Your Honor.

3 MR. BOOZER - RE-DIRECT EXAMINATION BY MR. DAVIS:

4 Q: Mr. Boozer, I'm going to ask you, on the questions
5 that counsel's asked you -- let me ask you this. On
6 the Woodtrail plat, if -- you've heard the testimony
7 today about when you look at the easement and you
8 get down to the end of the easement there's a road
9 there?

10 A: Uh-huh.

11 Q: Okay. And you indicate you don't know about the
12 road as to whether it's there or whatever, you just
13 -- you're not sure?

14 A: Right.

15 Q: Is that correct?

16 A: That's correct.

17 Q: Okay. Now, if you had a person come to SCE&G and
18 they wanted to get permission to get to the water,
19 and you saw this plat that showed a road on it,
20 would you have a problem granting them rights they'd
21 be entitled to because of that road being there?

22 A: No. I don't think we -- that -- we would not --
23 what kind of permit would they be asking for?

24 Q: Okay. But would it bother you, the fact there is
25 actually a road sitting there that people could have

1 legal rights in, is my question. Do you understand
2 that question?
3 A: Right.
4 Q: Okay.
5 A: Right.
6 Q: All right. Would that give you some difficulty as
7 to providing anything to the person because the road
8 it sitting there in that easement?
9 A: Well, the only thing we would have to look at is on
10 our criteria and, you know, how many feet of
11 shoreline they may have of, you know ---
12 Q: Got you.
13 A: --- how many feet of shoreline they have on the
14 shoreline.
15 Q: Okay.
16 A: And we would look at the depth of the water and
17 different things like that before we'd make a
18 decision whether we'd permit something there.
19 Q: And you would try to determine the rights of people
20 in that road area before you granted anything that
21 was allowed under the policy?
22 A: Well, we'd have to have a deed showing ownership.
23 Q: Okay. All right. Or a plat showing the road?
24 A: Or a plat would be good.
25 **MR. DAVIS:** Thank you, Your Honor.

1 **MR. BOOZER - RECROSS-EXAMINATION BY MR. TIGHE:**

2 Q: But if there were any roads beyond the 360, you
3 would not permit anybody easement?

4 A: No, no, no.

5 Q: Thank you. No further questions.

6 THE COURT: All right. Anymore redirect?

7 MR. DAVIS: No. Can we excuse the witness?

8 THE COURT: Yes. Thank you so much, sir. Watch your step
9 coming down.

10 MR. BOOZER: Thank you.

11 THE COURT: All right. Mr. Davis, how many more witnesses
12 do you have?

13 MR. DAVIS: Mr. Drasites very briefly, and then we've got
14 one surveyor.

15 THE COURT: All right. Can we -- do you think we'll
16 finish today?

17 MR. DAVIS: Oh, yeah.

18 THE COURT: All right. Let's stand in recess until about
19 2:15.

20 MR. DAVIS: Very good.

21 (Off the record from 1:10 p.m. to 2:19 p.m.)

22 THE COURT: Okay. Mr. Davis?

23 MR. DAVIS: Your Honor, may it please the Court?

24 THE COURT: Yes, sir.

25 MR. DAVIS: We'd call Mr. Carl Bostick.

(Witness is sworn.)

Carl Bostick, being duly sworn, testifies as follows:

MR. BOSTICK - DIRECT EXAMINATION BY MR. DAVIS:

Q: Mr. Bostick, if you would, state your full name.

A: Carl West Bostick.

Q: And your home address is what?

A: 437 Pitney Road in Lexington County.

Q: And your occupation is what?

A: Surveyor.

Q: And are you a South Carolina registered land surveyor?

A: Yes, I am.

Q: And you've had that capacity since when?

A: '72.

Q: Okay. And you have maintained your license during that period of time?

A: Yes.

Q: Is there a certain geographical area that you work for surveys?

A: I cover pretty much ---

Q: Or is it the state of South Carolina?

A: Yeah.

Q: Okay. What type surveys have you done?

A: Well, I've done, I guess the largest, a warehouse down in Elloree for Food Lion and several Food Lion

1 shopping centers for the Ervin Company. And a lot
2 of lots and subdivisions.

3 Q: Okay. When you say lots, you mean residential lots?

4 A: Yes. Yes.

5 Q: Have you done surveys in the past years for Mr.
6 Drasites?

7 A: Yes, I have.

8 Q: Okay. And let me ask you -- before you stepped up
9 here I asked you to look at Defendants' Exhibit
10 Number 16, Plaintiffs' Number 23, as well as
11 Defendants' Number 14. And these are surveys that
12 you have done on the Drasites property over the
13 years; is that correct?

14 A: That's correct.

15 Q: All right. And you have looked at a number of
16 surveys that affect the Drasites property or what we
17 call the Case property or Duncan property?

18 A: Yes.

19 Q: Okay. And I've asked you to give testimony in this
20 case to give a opinion as to where the -- what we
21 call the 360 contour is on the Drasites property?

22 A: Yes.

23 Q: All right. And you're ready to do that when I ask
24 the question; is that correct?

25 A: Yes.

1 MR. DAVIS: Your Honor, we'd move to have him qualified as
2 an -- to give expert opinion on the 360 contour.

3 MR. TIGHE: No objection.

4 THE COURT: Your motion's granted.

5 MR. DAVIS: All right.

6 Q: Mr. Bostick, looking at -- one issue that's come up
7 in this case is there's a plat that we'll refer to
8 as the Woodtrail plat, the Woodtrail subdivision
9 plat. Are you familiar with that plat?

10 A: Yes, I am.

11 Q: Okay. Would you identify what this is that I have
12 placed in front of you?

13 A: I got this from Bill Brown at Civil Engineering ---

14 Q: Okay.

15 A: --- off of the mylar.

16 Q: Okay. And that would be Defendants' Exhibit Number
17 13; is that correct?

18 A: Yeah, except it's a lot cleaner.

19 Q: Right.

20 A: It's in a lot more detail.

21 Q: What is this one? Is this the original?

22 A: Yes.

23 Q: Okay. And does this plat show what we know as the
24 Duncan property on the plat, the plaintiffs'
25 property?

1 A: Yes, it does.

2 Q: Okay. Does it also -- if you would point out where
3 the Duncan property is on the plat so Your Honor can
4 see.

5 A: (Witness complies.)

6 Q: Right there. And does it show the easement that
7 affects Mr. Drasites' property?

8 A: Yes, it does.

9 Q: And where is that?

10 A: It's right here.

11 Q: Okay. Now, this plat -- we've had evidence today
12 that there's, it looks like there's a road that is
13 adjacent to this easement that traverses along that
14 side of the subdivision?

15 A: Yes, that's correct.

16 Q: Okay. Does that plat show that?

17 A: Yes, it does.

18 Q: Okay. And your opinion in looking at the issues in
19 this case, does that -- that, the Case/Duncan
20 easement tie into that road?

21 A: Yes, it does.

22 Q: Okay. And why do you say that?

23 A: Because I'm looking at -- it starts at the back of
24 his and goes to the front part of the dirt road.

25 Q: Okay. And where does that road take you when you go

1 down that line?

2 A: Back up to Johnson Marina Road.

3 Q: Okay. And, don't tell me what Bill Brown said, but

4 you had conversations with him?

5 A: Yes.

6 Q: Okay. And you've seen the documents that involve

7 this particular plat?

8 A: Yes.

9 Q: And the purpose of that easement was what?

10 A: To access Johnson Marina Road by this dirt road.

11 Q: Okay. And that is this particular road here that

12 we're talking about on this plat; is that correct?

13 A: That's correct.

14 Q: All right. Let me show you Defendants' Exhibit

15 Number 16. What is this plat?

16 A: Looks like -- well, it's my topo of the Drasites

17 plat.

18 Q: And if you take just a second to look, that was done

19 when?

20 A: In '97.

21 Q: Okay. It looks like it was December 1997?

22 A: Yes.

23 Q: Okay. And what was the purpose of that plat?

24 A: To locate his house.

25 Q: And does it show the elevations on that property?

1 A: It does.

2 Q: And does it show the 360 elevation on that property?

3 A: It does. I probably need -- but I know it does ---

4 Q: It's there?

5 A: --- because I've got the full scale.

6 Q: Okay. And do you know that this was done prior to

7 the excavation of Lake Murray in front of his

8 property and Mr. Bullock's property?

9 A: Yes.

10 Q: Okay. And in giving any -- have you considered that

11 plat in the opinion I'm going to ask you about in

12 just a second? You've looked at this plat and

13 you're familiar with this plat, are you not?

14 A: Yes. Yes.

15 Q: Okay. Looking at Defendants' Exhibit Number 14, is

16 this a plat that you have prepared for Mr. Drasites

17 in this matter?

18 A: Yes, it is.

19 Q: Okay. On this plat, is there a spot where you're

20 giving your opinion to a reasonable surveying

21 certainty where the 360 contour is on Mr. Drasites'

22 property at the time the easement was created to Mr.

23 Case in 1976?

24 A: It's right next to the retaining wall.

25 Q: Right next to the retaining wall. Now, the

1 retaining wall you're talking about is a retaining
2 wall that was placed on the Drasites property at the
3 time of the excavation?
4 A: Yes.
5 Q: Okay. And ---
6 A: I wasn't there when they ---
7 Q: I understand, but that is your understanding; is
8 that correct?
9 A: Yes.
10 Q: And that -- you're saying the 360 contour is, and
11 you have spotted where the 360 contour is on this
12 plat, have you not?
13 A: Yes.
14 Q: Okay. And let's ---
15 **MR. DAVIS:** Do you have a Magic Marker?
16 **COURT REPORTER:** I have a highlighter.
17 Q: I have drawn in yellow, and does that area where you
18 say the 360 contour, is it matching up with the
19 retaining wall?
20 A: Yes.
21 Q: Okay. With the retaining wall. All right. And
22 that area is some distance in from the water's edge,
23 is it not?
24 A: Yes, it is.
25 Q: Okay. Answer any questions that counsel may have.

1 MR. BOSTICK - CROSS-EXAMINATION BY MR. TIGHE:

2 Q: Mr. Bostick, I'm handing you first of all what's
3 been marked as Defendants' Exhibit 20 and ask if you
4 recognize that.

5 A: Yes.

6 Q: Tell us what that is.

7 A: That's a tie that I made for a removal of a fence
8 that Mr. Drasites put in. And I show how far it is
9 and the location of it.

10 Q: Does it also show the location of the easement
11 across Mr. Duncan's property?

12 A: Yes.

13 Q: I mean, for Mr. Duncan.

14 A: Yes.

15 Q: Where is the termination of that easement on this
16 plat?

17 A: Down here I guess.

18 Q: Yeah. I mean, is -- I'm indicating -- I'm going to
19 mark with a blue pen a line here. Is that the
20 boundary line of Mr. Drasites' lot?

21 A: Yes.

22 Q: As it -- closest to the lake? And does this plat
23 show that the easement goes all the way to the
24 boundary line of Mr. Drasites' lot?

25 A: Yes.

1 Q: Okay. And this other plat that you just testified
2 about, Defendants' 14, shows it as not reaching the
3 lake, does it not?
4 A: That's correct.
5 Q: And how do you explain the difference between those
6 two?
7 A: There are two corners down here that were placed in
8 before the excavation, that came on a Hickson plat I
9 believe it was. And I just tied into it. But when
10 you come back up here, after the 360 -- I changed
11 this.
12 Q: Okay. And the ---
13 A: And I have -- you know better than I do where the
14 easement ends.
15 Q: You're not testifying to where the easement ends,
16 are you?
17 A: No.
18 Q: Okay. Now, but you are testifying based on the
19 later plat, this one, that the 360 right now is
20 right here, right about where this wall is; is that
21 correct?
22 A: Yes.
23 Q: Okay. And if that's true then -- of course, you
24 don't know where it was in 1976, do you?
25 A: Yes, I do.

1 Q: How do you know that?

2 A: Because I shot all of these in here, and I was
3 carrying an elevation with me then. The question,
4 these over here, is that I tied into this
5 gentleman's lot over there.

6 Q: When did you do that work, Mr. Bostick?

7 A: I guess it was '97, same time.

8 Q: Okay. But I'm asking you about '76. You don't know
9 where the ---

10 A: Oh, yeah.

11 Q: You don't know where the contour was in '76, do you?

12 A: No.

13 Q: And you don't know, you haven't seen anything that
14 indicates at that time that it wouldn't have been
15 along this property line that is closest to the
16 lake, have you?

17 A: No. But when I get around the lake, when I'm
18 surveying, I pay attention to where the water is.

19 Q: But it isn't always at the 360, is it?

20 A: Absolutely. But I can tell what elevation it is.
21 Every time I go to the lake I always get what SCE&G
22 says the elevation of the lake is at that particular
23 time. Sometimes it's good and sometimes it's not.

24 Q: Most often than not it's out here somewhere, isn't
25 it?

1 A: Yes.

2 Q: Out beyond his property line?

3 A: Like it's shown on that plat.

4 Q: Right. And, but now, based on your second survey,

5 the one that identifies the 360 today, if that were

6 the 360 in 1981 this road would be below the 360,

7 wouldn't it?

8 A: Based on that right there ---

9 Q: Isn't that right?

10 A: Yeah. I think so. I guess.

11 Q: Yeah. I mean, you're placing the 360 today -- let's

12 see if I can find where we are here now. You're

13 placing the 360 today up about here, if I'm

14 correctly looking at this plat.

15 A: Uh-huh.

16 Q: And, you know, it doesn't go all the way to the

17 property line of Mr. Drasites, which is right here.

18 Right? This was the 199 -- this would be the

19 property line of Mr. Drasites, would it not?

20 A: Uh-huh.

21 Q: Now, these lots were not configured this way

22 ultimately, were they?

23 A: That's correct.

24 Q: So this subdivision plat really is not of this

25 subdivision, is it? The only thing on here that's

1 right is Mr. Case's lot; isn't that correct? In
2 terms of lot configurations?
3 A: Well, yeah, it was changed.
4 Q: I mean, this doesn't -- I mean, Mr. Drasites' lot
5 doesn't look like this, does it?
6 A: No. Mr. Hickson split up that property.
7 Q: Okay. And so, if I'm understanding it correctly,
8 you would say that the 360 contour goes somewhere
9 like this. On the inside of Mr. Drasites' boundary
10 line, the 360 would be up in here?
11 A: Yes.
12 Q: And his boundary line's down here?
13 A: Now, I don't think that was -- I don't think -- that
14 was put in there by Civil Engineering.
15 Q: No, but I mean -- I can get you the plat of Mr.
16 Drasites' lot ---
17 A: Yeah, okay.
18 Q: But, I mean, I think you've probably seen it
19 already. And you don't have any doubt this is his
20 boundary line of his lot, do you?
21 A: Yes.
22 Q: That's his boundary line of his lot, isn't it?
23 A: Yeah.
24 Q: Okay. I mean, there's no -- I mean, a minute -- it
25 sounded like maybe you had some questions about it,

1 but ---

2 A: I do, because it was a little bit lower, as a lot of

3 lake property is.

4 Q: Yeah. I mean, do you want to pull out the surveys

5 of his lot and see if this line ---

6 A: It is. It is.

7 Q: It is? Okay.

8 A: Yeah. That's the same as this line, and I think

9 this was extended down there.

10 Q: Okay. That makes sense to me. But the point I

11 wanted to make is that the 360 contour, if it were

12 where you've identified it on Randy's yellow mark,

13 if it were there in 1976, then whoever set up this

14 subdivision would have put the subdivision out in

15 the middle of the lake, wouldn't it?

16 A: Not in the middle of the lake, no.

17 Q: Well, it would put it out beyond the 360? If the

18 360 was always where the yellow line is, and this is

19 the boundary line of Mr. Drasites' plat, the lot,

20 then whoever designed this lot would have put his

21 line out in the middle of -- in the lake, in the --

22 under the 360; is that right?

23 A: I really don't know. I did a '97 and I tied in some

24 irons that -- I wasn't a hundred percent sure. But

25 since -- I was told by Mr. Drasites that when they

112

1 bought that property it was not considered lake
2 property.

3 Q: Well, he may not have considered it lake property,
4 but did he also tell you that he owned property
5 beyond the 360 today?

6 A: No.

7 Q: He hasn't told you that? Okay. But you still agree
8 with me that this is the boundary line of his lot?

9 A: Yes.

10 Q: Right here. And so that would mean that ---

11 A: That's, that's what he got deeded.

12 Q: Yeah.

13 A: You know, I just ---

14 Q: Right. Right. But there's no reason to believe
15 that the 360 contour wasn't at the outer edge of
16 this subdivision when it was developed, is there? I
17 mean, don't developers normally -- I mean, we've got
18 a deed in evidence that shows the grant of the
19 fringe lands to the predecessor in title, to the
20 360.

21 A: Yes.

22 Q: And normally wouldn't you expect a developer to
23 develop down to the 360?

24 A: You'd expect that.

25 Q: Yeah. And, I mean, that's ---

1 A: But also there's a 358, too.

2 Q: Yeah, I'm sure.

3 A: And a 356.

4 Q: Sure. Now, you testified about this and -- let me
5 see. I only have one other question and that is,
6 when you did this plat you thought the easement ran
7 to the lake, didn't you? Or to the end of Mr.
8 Drasites' property line?

9 A: Yes.

10 Q: What? Is that a yes?

11 A: Yes.

12 Q: Okay. Thank you. No further questions.

13 **THE COURT:** All right. Any redirect?

14 **MR. DAVIS:** Redirect, Your Honor.

15 **MR. BOSTICK - RE-DIRECT EXAMINATION BY MR. DAVIS:**

16 Q: Mr. Bostick, counsel for the plaintiff has been
17 talking about measurements and distances on footage
18 and so forth. What controls in regards to priority
19 in surveying, monuments or footage, measurements,
20 what? Monuments control over footage normally?

21 A: Yes.

22 Q: Okay. All right. Let me ask you this then. On
23 your survey, which is Defendants' Exhibit Number 14,
24 you show the retaining wall right there.

25 A: Yeah.

1 Q: And that -- would you consider that some sort of
2 monument? What would you consider that?

3 A: The retaining wall?

4 Q: No. What does -- what would you call that as a
5 surveyor? Just a -- one surveyor today called it an
6 improvement. What would you call that?

7 A: A retaining wall.

8 Q: Okay. But is it -- is there significance to that
9 retaining wall as to its location, is what I'm
10 asking? Meaning like the contour?

11 A: Well, I can tell you -- yes.

12 Q: What is that?

13 A: The 360 at a particular time. At another time I did
14 a topo ---

15 Q: Okay.

16 A: --- it was at the 360.

17 Q: Okay. At the 360 line. And when you did the topo
18 survey in December '97, which is prior to the
19 excavation, does that plat match up with this
20 location of the retaining wall?

21 A: Yes.

22 Q: Okay. All right. Now, let me ask you this. On the
23 other side of this 20-foot easement, there's a power
24 pole. Are you familiar with there's ---

25 A: Yes.

1 Q: --- a power pole over there? And the power line
2 passes over this 20-foot easement. And my
3 understanding from Mr. John's testimony is that that
4 stake right there is the center line of that power
5 pole, okay? That's what he said, is that right --
6 that right there's the center line of the power
7 pole.

8 A: Okay.

9 Q: Okay. And the evidence is that that power pole is
10 20 feet in width. If you -- what is the -- how far
11 do you estimate your contour from that center line
12 of that power pole, do you have any idea?

13 A: No.

14 Q: Okay. But the scale here -- this is to scale; is it
15 not?

16 A: Yes, it is.

17 Q: Okay. So the Court could look at that power pole
18 and see where you got your 360 contour; could they
19 not?

20 A: Yes.

21 Q: Okay. Answer any questions counsel may have.

22 THE COURT: Any recross?

23 MR. TIGHE: Yes.

24 MR. BOSTICK - RECROSS-EXAMINATION BY MR. TIGHE:

25 Q: I'm looking at Exhibit 23, which is your plat. And

1 you shade the easement down here, or you dotted down
2 here, I can't tell exactly. But isn't this the same
3 power line going across here? Right close to the
4 end, isn't that a power line?

5 A: It's hard to read. I think it's supposed to be,
6 yeah.

7 Q: Okay.

8 MR. TIGHE: I don't have any further questions, Your
9 Honor.

10 **MR. BOSTICK - EXAMINATION BY THE COURT:**

11 THE COURT: Okay. Mr. Bostick, sometimes in non-jury
12 cases the judge will ask questions. You can have a
13 seat. I just wanted to ask you, I thought I heard
14 you say -- you can have a seat. I thought I heard
15 you say in response to a question, I think you were
16 asked what was the purpose of the easement. And
17 your answer was to gain access to the Johnson Marina
18 Road; is that what your answer was?

19 A: (Nods affirmatively.)

20 THE COURT: How do you know that?

21 A: I think it's clearer on this original plat here.

22 THE COURT: Okay.

23 A: And with it -- everybody supposedly knowed. I don't
24 know whether I got it from Bill Brown or what, but
25 I've looked at some of his documents that he did,

1 and it was my understanding from the people at Civil
2 Engineering that this was to have access to the dirt
3 road that went to Johnson Marina Road.
4 **THE COURT:** Not access to the lake?
5 A: No.
6 **THE COURT:** Okay.
7 **MR. TIGHE:** Your Honor, I'd move to strike that. That's
8 obviously hearsay and ---
9 **THE COURT:** Okay. But ---
10 A: That's obvious on the plat.
11 **MR. TIGHE:** Well ---
12 A: To me.
13 **THE COURT:** Wait a second. Objection overruled. And
14 you've had your recross, so I'm sorry.
15 **MR. TIGHE:** Okay.
16 **THE COURT:** It drives lawyers nuts I don't give them a
17 chance to follow up on my questions. Yeah, I just
18 wanted to figure out how you knew that. All right,
19 thanks a lot, sir. You can come down. Watch your
20 step coming down.
21 **MR. DAVIS:** May we excuse this witness?
22 **THE COURT:** Any objection?
23 **MR. TIGHE:** No objection.
24 **THE COURT:** All right. Thank you, Mr. Bostick. All
25 right. Mr. Davis?

1 MR. DAVIS: The last thing is, I would like to put into
2 evidence the property itself.

3 THE COURT: Okay.

4 MR. DAVIS: If the Court feels like he would like to go
5 out and see the road, that'd be the best evidence of
6 -- the road itself or whatever else it wants to see
7 is fine with us.

8 THE COURT: Yeah, what I normally do is I just make an
9 appointment for everybody who wants to be out there
10 to see me see it, to show it to me.

11 MR. DAVIS: Okay.

12 THE COURT: What address would I be going to?

13 MR. DAVIS: What's your address, Roy?

14 MR. DRASITES: 1310 Silver Point Road, Chapin. Which is
15 halfway between Ballentine and White Rock.

16 MR. DAVIS: Okay.

17 MR. DRASITES: And you would access it off of Highway 76
18 to Johnson Marina Road, which would run into Silver
19 Point Road.

20 MR. DAVIS: Your Honor, if it's permissible I'll send, and
21 copy counsel, a GPS, if you want it.

22 THE COURT: Okay. I appreciate that, but ---

23 MR. DAVIS: We'll do that, if that's okay.

24 THE COURT: Do y'all want to do that tomorrow at a certain
25 time, say at noon tomorrow or 11 tomorrow or

1 something?

2 MR. TIGHE: Sure.

3 MR. DAVIS: Yeah.

4 MR. STANLEY: That's certainly fine with me.

5 THE COURT: Okay. About 11?

6 MR. DAVIS: Yeah.

7 MR. STANLEY: Eleven o'clock tomorrow?

8 THE COURT: Yes, sir, 11 a.m. Meet me out there. I may

9 have a staffer with me, may not.

10 MR. DAVIS: Sure.

11 THE COURT: All right. So, with that, y'all rest, Mr.

12 Davis?

13 MR. DAVIS: And I would make a -- I -- we rest except that

14 I would like to make a motion for the ---

15 THE COURT: Okay. Let's say something about the plaintiff

16 not being here. I don't -- unless he's going to say

17 something that contradicts all your other evidence,

18 Mr. Tighe, I don't think we need to keep this open

19 just for him to testify. Unless you disagree. Mr.

20 Davis, do you disagree with that?

21 MR. DAVIS: I don't disagree.

22 MR. TIGHE: Mr. Drasites' not going to testify?

23 MR. DAVIS: No.

24 MR. TIGHE: Okay. Well, I don't care, we can close the

25 record.

1 **THE COURT:** Okay. Yes, sir, Mr. Davis, you had a motion?

2 **MR. DAVIS:** I would move for a directed verdict. After
3 looking at all the evidence, the evidence shows that
4 there was -- the plaintiff has not proved there was
5 intent that the road was put there for the purpose
6 of providing access to the lake. The only -- the
7 testimony that's presented by the -- for the
8 plaintiff's surveyors, but from this surveyor is
9 reaffirming the fact that it was really for another
10 purpose and not for lake access. And that's based
11 on the plat that was done in '81, which was only
12 five years after the original easement.

13 **THE COURT:** Okay. Your motion's denied.

14 **MR. DAVIS:** Okay.

15 **THE COURT:** I'd like proposed orders though.

16 **MR. DAVIS:** Okay.

17 **MR. TIGHE:** Okay.

18 **THE COURT:** How long would it take y'all to get proposed
19 orders?

20 **MR. TIGHE:** A week.

21 **THE COURT:** Mr. Davis?

22 **MR. DAVIS:** I tell you what, I'm -- Your Honor, if I
23 could, I'm here next week and then I'm gone on
24 vacation Friday of next week. And it would squeeze
25 me a little bit knowing my schedule ---

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1 **THE COURT:** The 8th, you're leaving then?
2 **MR. DAVIS:** I'm leaving on the -- I am leaving on the
3 Friday of the -- I'm leaving on Friday the 4th.
4 Whatever this coming Friday is, I'm leaving.
5 Whatever that is.
6 **THE COURT:** When are you coming back?
7 **MR. DAVIS:** I'll be back in a week.
8 **THE COURT:** Okay.
9 **MR. DAVIS:** So I'd be back on the 11th, so could we have -
10 - is it pushing it to have it to the, say the 15th
11 if that's a Friday?
12 **THE COURT:** Mr. Tighe?
13 **MR. TIGHE:** Fine with me.
14 **THE COURT:** Yeah, okay.
15 **MR. DAVIS:** Okay. Okay. Very good.
16 **THE COURT:** If you have any problems, let me know.
17 **COURT REPORTER:** Before we go off the record, can I
18 clarify, all of your exhibits are in?
19 **MR. DAVIS:** Yes. Yes, ma'am.
20 **COURT REPORTER:** Okay. Without objection, Mr. Tighe,
21 correct?
22 **MR. TIGHE:** Yeah.
23 **COURT REPORTER:** Thank you.
24 (Defendants' Exhibit Numbers One and Four through 18 are
25 entered into the record.)

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1 **THE COURT:** Okay, if nothing else, we stand adjourned
2 until tomorrow at 11 a.m.

3
4 (There being nothing further, the hearing was adjourned at
5 2:46 p.m.)

CERTIFICATE

I certify that the foregoing transcript, consisting of 123 pages, is a true and accurate transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on April 28, 2015, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

September 29, 2015

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

D 393 PAGE 150

CANCELLED

FILED

The State of South Carolina,
COUNTY OF RICHLAND

AUG 3 3 51 PM '76

REGISTER OF
DEEDS
RICHLAND COUNTY, S.C.
CLARA I. BARTLETT

KNOW ALL MEN BY THESE PRESENTS, That

WOODBERRY UTILITIES, INC.

in the State aforesaid, for and in consideration of the sum of
Five and no/100 Dollars
to it in hand paid at and before the sealing of these presents, by Jay Clark Case
in the State aforesaid, (the receipt whereof is hereby acknowledged)
has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said

JAY CLARK CASE

A non exclusive

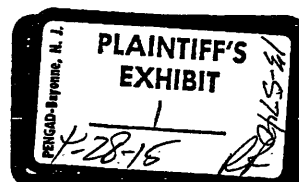
The Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray.

Being part of the property conveyed to Woodberry Utilities, Inc. by deed from Betty A. Thompson dated 14 August 1973 and recorded 14 August 1973 in RMC Office for Richland County in Deed Book D289 at page 790.

Address of Grantee: Route 2, Chapin, South Carolina 29036

D 393 PAGE 150

State of South Carolina
I certify that this is a true and correct copy
Dated 10/3/76, 20 14
Register of Deeds
Richland County



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 Jay Clark Case, his Heirs and Assigns forever.

And the said Woodberry Utilities, Inc. does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said Jay Clark Case Heirs and Assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF Woodberry Utilities, Inc. has caused

these presents to be executed in its name by R. J. Marsh its President, and by its

and its corporate seal to be hereto affixed this 28th day of July in the year of our Lord, one thousand nine hundred and Seventy Six and in the year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in Presence of

Marta J. Kennedy

Witness

Witness

Woodberry Utilities, Inc. (Seal)

By R. J. Marsh President.

Secretary or Treasurer.

The State of South Carolina,

COUNTY OF RICHLAND

PERSONALLY appeared before me

Marta T. Kenneally

(Insert name of Witness)

who, in oath, says that he saw the within-named Woodberry Utilities, Inc.

(Insert name of Corporation)

by

R. J. Marsh

(Insert name of President or Vice President)

its

President and

its

(Insert name of Secretary or Treasurer)

sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the

same, and that he with

Phriness E. Cox

(Insert name of other Witness)

witnessed the

execution thereof.

Marta T. Kenneally

(Witness)

SIVORN to before me, this 28th day of July

, A. D. 19 76

(Seal)

Notary Public, S. C.

My Commission expires 7 May 1979.

State of South Carolina
 certify that this is a true and correct copy
 Dated 10/21/95
 Register of Deeds
 Richland County



Aug 14 10 43 AM '95

Space above this line for recording information

DBK 1273 PAGE 242

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS THAT, SILVER POINTE COVE ASSOCIATES, INC. herein referred to as "Grantor" for and in consideration of the sum of SEVENTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$77,500.00) Dollars to me paid by ROY R. DRASITES AND ELIZABETH P. DRASITES, hereinafter referred to as "Grantees" in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

ALL THAT CERTAIN PIECE, PARCEL OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove Subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc. dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This being the same property conveyed unto the Grantor herein by recorded in the Office of the RMC for Richland County in Deed Book D1262 at Page 377.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: 611 Clearview Court
 Columbia, SC 29212

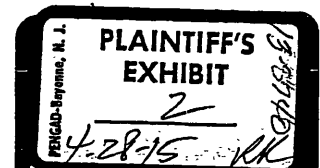
Tax/Map No. 1411-02-04

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

DBK 1273 PAGE 242

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and



DBK 1273 PAGE 243

administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 11th day of August, in the year of our Lord one thousand nine hundred and ninety five.

Signed, Sealed and Delivered
in the Presence of:



Silver Pointe Cove Associates, Inc.



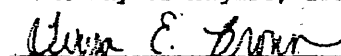

PRESIDENT
CHARLES J. BEDER

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Personally appeared before me the undersigned and made oath that she saw the within-named Grantor sign, seal and ~~and~~ His act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
11th day of August, 1995




Notary Public for the State of South Carolina
My Commission Expires: February 3, 2003

DBK 1273 PAGE 243

312.00
132.00



BOOK 1262 PAGE 377

JUN 15 1 13 PM '95

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DEED BY INDIVIDUAL(S)

KNOW ALL MEN BY THESE PRESENTS, that R.J. MARSH (hereinafter called "Grantor"), for and in consideration of the sum of ONE HUNDRED TWENTY THOUSAND AND 00/100 (\$120,000.00) DOLLARS to the Grantor in hand paid at and before the sealing of these presents by SILVER POINTE COVE ASSOCIATES, INC. (hereinafter called "Grantee") in the State and County aforesaid, (The receipt of which is hereby acknowledged.) has granted, bargained, sold and released, and by these Presents, does grant, bargain, sell and release unto the Grantee, his heirs, successors and assigns:

All those certain pieces, parcels, lots or tracts of land, with the improvements thereon, if any, situate, lying and being in the County of Richland, State of South Carolina, and being more specifically shown and designated as Lots 1, 2, 3, and 4, inclusive, on a plat of Silver Pointe Cove prepared for Silver Pointe Cove Associates, Inc., by C T H Surveyors, Inc., dated April 3, 1995, and recorded in the Office of the RMC for the aforesaid County in Plat Book 55, at page 7341.

This being a portion of the property conveyed to the Maker of this Instrument by deed of Woodberry Utilities, Inc. dated April 11, 1985 recorded in Book D737 at page 410.

Grantee's Address: 500 HARBISON BLVD., STE. 103, COLUMBIA, SC 39212

TMS # 1410-02-04 & 1410-02-05

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, her appurtenances and Appurtenances to the Premises belonging, or in anyway incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

State of South Carolina
I certify that this is a true and correct copy
Dated 10/13/95
[Signature]
Register of Deeds
Richland County

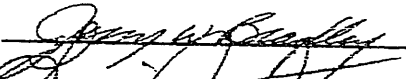
PLAINTIFF'S EXHIBIT
4-28-15 KR

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, his Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

Dated: June 8, 1995

Signed, Sealed and Delivered
in the Presence of:





R. L. MARSH

BOOK 1262 PAGE 379

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PROBATE
JUN 11 1995
A 12 224

PERSONALLY APPEARED before me, a Notary Public for the aforesaid, the undersigned witness, who, being duly sworn, says that (s)he was the within named Maker of the above instrument, sign, seal and deliver the within named Instrument; and (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME THIS

June 8, 1995

Yancy W. Bradley

David A. Jones
NOTARY PUBLIC FOR ABOVE
Commission EXP: 11/4/2003

BOOK 1262 PAGE 379

ED 737 PAGE 410

State of South Carolina }
COUNTY OF RICHLAND }

DEED
(By Corporation or Partnership)

FILED
REGISTER OF DEEDS
CLAFAT
1985 APR 16 PM 2:23
CENTRAL OFFICE PRODUCTS
Columbia, S. C.
FORM #732
REV. '77

AFFIDAVIT



KNOW ALL MEN BY THESE PRESENTS, That WOODBERRY UTILITIES, INC.
(hereinafter called "Grantor"), for and in consideration of the sum of FIVE DOLLARS AND NO/100--
Dollars

-----(\$5.00) ONLY-----

to it in hand paid at and before the sealing of these presents, by R. J. MARSH
of COLUMBIA, SOUTH CAROLINA (hereinafter called "Grantee") in the State aforesaid,
(the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these
Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:

SEE ATTACHED SCHEDULE "A" FOR LEGAL DESCRIPTION

This being a portion of the property conveyed to Grantor by deed of Betty
A. Thompson recorded August 14, 1973 in Deed Book D289 page 790.

Grantees' Mailing Address: 4526 St. Andrews Road
Columbia, SC 29210

State of South Carolina
I certify that this is a true and correct copy
Dated 10/3/20
[Signature]
Register of Deeds
Richland County

PLAINTIFF'S
EXHIBIT
5
4-28-15
KR

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind itself and its successors, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others; including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its undersigned officer(s) or partner(s) and its seal to be hereto affixed.

Date: April 11, 19 85 .

Signed, Sealed and Delivered

in Presence of:

[Signature]
J. Georgaklis
[Signature]
Ursula G. Lucas

WOODBERRY UTILITIES, INC. (Seal)

By: *[Signature]*
J. Marsh, President
By: *[Signature]*

State of South Carolina }
COUNTY OF RICHLAND } PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor by its officer(s) or partner(s) as its act and deed, sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me (date) April 11, 1985

[Signature]
J. E. Georgaklis (Witness)

[Signature] (Seal)
Ursula G. Lucas

Notary Public for South Carolina

My Commission expires: 10-1-90

8515

U. G. Lucas
COLUMBIA, S. C. 29204

State of South Carolina
COUNTY OF

Grantor

TO

Grantee

(include mailing address)

DEED

(By a Corporation or Partnership)

Filed this 14th day of April, A.D. 1985.

at 2:23 o'clock P. M.

and recorded in Deed Book 1985 at page 411

U. G. Lucas

U. G. Lucas, Clerk of Court

Richland County, S.C.

Recorded this

day of

19

Page

County.

or

FD-737-412

PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing 35.7 acres, more or less, and being more fully shown and delineated on a plat prepared for Betty A. Thompson by McMillan Engineering Company, dated March 29, 1960 and recorded in the office of the Clerk of Court for Richland County in Plat Book 15 at page 234 and having the following boundaries and measurements as shown on said plat; on the north by property of Lowman Home, measuring thereon six hundred eighty-eight (688') feet; on the east by property of Lowman Home, measuring thereon one thousand six hundred thirty-seven (1,637') feet; on the south by property of Wertz, measuring thereon two hundred fifty-two and three-tenths (252.3') feet; on the southwest by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon three hundred ninety-eight and five-tenths (398.5') feet; on the South by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred fourteen and nine-tenths (114.9') feet; on the east by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described) measuring thereon one hundred eighty-two and six-tenths (182.6') feet; on the south by a County Road (Dirt), measuring thereon eight hundred eighty-three and (883') feet; and on the west by County Road (Paved), measuring thereon along an irregular line one thousand, six hundred fifty-nine and five-tenths (1,659.5') feet; be all measurements a little more or less.

ALSO:

All of those certain two pieces, parcels or tracts of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing in the aggregate 1.28 acres, more or less, and being more fully shown on Partial Plat of lands of Mrs. J. W. Kleckley and W. F. McCarthy, dated October 20, 1959, revised July 27, 1960, as Parcel B containing .98 acre, more or less, and Parcel C containing .28 acre, more or less, the said plat being attached to and recorded with the deed from South Carolina Electric & Gas Company hereinbelow referred to as Exhibit "A" and being bounded on the North by property hereinabove described, on the East by property now or formerly of Wertz, on the South by property of South Carolina Electric & Gas Company, and on the West by property hereinabove described.

LESS:

The right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray. (This property being previously conveyed to Jay Clark Case in Deed Book D393 page 150)

LESS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina being shown and designated as a

FD-737-412

ED 737 PAGE 413

SCHEDULE "A" CONTINUED

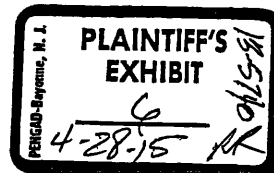
One (1) acre tract on a plat prepared for R. J. Marsh, Inc., by Douglas E. Platt, Sr., dated March 25, 1976, and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon it measures 208' feet; On the Southeast by property now or formerly of South Carolina Electric & Gas Company whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; be all measurements a little more or less.

LESS:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a 1.00 acre tract on a plat prepared for Charles K. and Margaret C. Miles by Civil Engineering of Columbia, dated October 17, 1977 and to be recorded. Said lot, according to said plat, is bounded and measures as follow, to-wit: On the North by lands now or formerly of Richard Marsh whereon it measures 218.40 feet; on the East by lands now or formerly of Richard Marsh whereon it measures 175.58 feet; On the South by unpaved road whereon it measures 243.72 feet; On the West by State Road S-40-610 whereon it measures 239.26 feet; be all measurements a little more or less.

Grantor: Woodberry Utilities, Inc.
Grantee: R. J. Marsh
Date: April 11, 1985

ED 737 PAGE 413



D 289 PAGE 790

State of South Carolina,
COUNTY OF RICHLAND.

AUG 14 4 07 PM '73

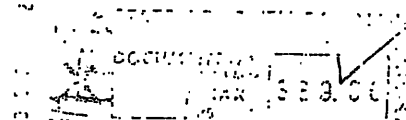
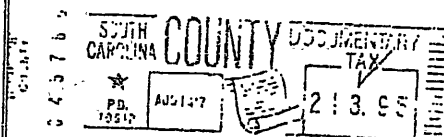
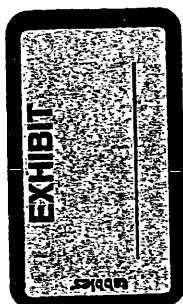
JOHN L. MAJOR
C.C. P & G.S.



AFFIDAVIT

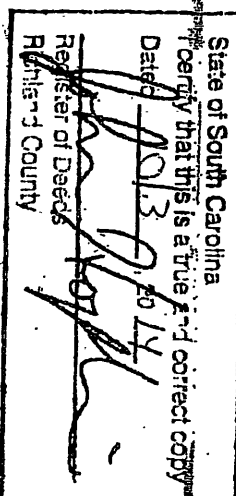
Know All Men By These Presents,

That I, Betty A. Thompson



in the State aforesaid for and in consideration of the
sum of Five (\$5.00) Dollars and other valuable consideration paid and
secured to be paid
to me paid by Woodberry Utilities, Inc.,
in the State aforesaid, the receipt whereof is hereby
acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release
unto the said
WOODBERRY UTILITIES, INC., ITS SUCCESSORS AND ASSIGNS FOREVER:

All that certain piece, parcel or tract of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing 35.7 acres, more or less, and being more fully shown and delineated on a plat prepared for Betty A. Thompson by McMillan Engineering Company, dated March 29, 1960 and recorded in the office of the Clerk of Court for Richland County in Plat Book 15 at page 234 and having the following boundaries and measurements as shown on said plat: on the north by property of Lowman Home, measuring thereon six hundred eighty-eight (688') feet; on the east by property of Lowman Home, measuring thereon one thousand, six hundred thirty-seven (1,637') feet; on the south by property of Wertz, measuring thereon two hundred fifty-two and three-tenths (252.3') feet; on the southwest by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon three hundred ninety-eight and five-tenths (398.5') feet; on the south by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred fourteen and nine-tenths (114.9') feet; on the east by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred eighty-two and six-tenths (182.6') feet; on the south by a County Road (Dirt).



(over)

D 289 PAGE 790

measuring thereon eight hundred eighty-three (883') feet; and on the west by County Road (Paved); measuring thereon along an irregular line one thousand, six hundred fifty-nine and five-tenths (1,659.5') feet; be all measurements a little more or less.

The above described property is the identical property heretofore conveyed to Betty A. Thompson, the grantor herein, by Henry D. Green by deed dated the 15th day of April, 1960 and recorded in the office of the Clerk of Court for Richland County in Deed Book 272 at page 440.

Also: All of those certain two pieces, parcels or tracts of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing in the aggregate 1.26 acres, more or less, and being more fully shown on Partial Plat of lands of Mrs. J. W. Kleckley and W. F. McCarthy, dated October 20, 1959, revised July 27, 1960, as Parcel B containing .98 acre, more or less, and Parcel C containing .28 acre, more or less, the said plat being attached to and recorded with the deed from South Carolina Electric & Gas Company hereinbelow referred to, as Exhibit "A", and being bounded on the north by property hereinabove described, on the east by property now or formerly of Wertz, on the south by property of South Carolina Electric & Gas Company, and on the west by property hereinabove described.

The above described property is the identical property heretofore conveyed to Betty A. Thompson, the grantor herein, by South Carolina Electric & Gas Company by deed dated May 1, 1963 and recorded in the office of the Clerk of Court for Richland County in Deed Book 354 at page 554.

This conveyance is made subject to existing easements of record, including public utility easements, rights of way for existing roads, and flooding and related easements in connection with the water of Lake Murray.

The address of the grantee is: 4526 St. Andrews Road, Columbia, S. C. 29210

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

To Have and to Hold all and singular the premises before mentioned unto the said Woodberry Utilities, Inc., its Successors

~~Heirs~~ and Assigns forever

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Woodberry Utilities, Inc., its Successors

~~Heirs~~ and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 14th day of August
in the year of our Lord one thousand nine hundred and seventy-three
and in the one hundred and ninety-eighth year of the Sovereignty
and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

Ray M. Linder
Carl A. Ellsworth

Betty A. Thompson (SEAL)
(SEAL)

STATE OF SOUTH CAROLINA, }
Richland County }

Personally appeared before me Carl A. Ellsworth
and made oath that he saw the within named Betty A. Thompson
sign, seal and as her act and deed, deliver the within written Deed for the uses and purposes therein
mentioned, and that he, with Ray M. Seigler witnessed the
execution thereof.

SWORN to before me this 14th
day of August 19 73.
Ray M. Seigler (L. S.)
Notary Public of S.C.
My commission expires:
STATE OF SOUTH CAROLINA, }
County }

Carl A. Ellsworth

NO RENUNCIATION OF DOWER
IS NECESSARY. GRANTOR
IS A WOMAN.
do hereby certify

I,
unto all whom it may concern, that Mrs.
this 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
heirs

and assigns, all her interest and estate, and also her rights 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

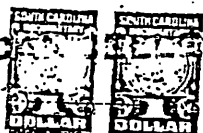
(L. S.)
Notary Public of S. C.

PLAINTIFF'S
EXHIBIT

13-5740
4-28-75
RN

BOOK 354 PAGE 554

FILED



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cost of Court Fee Paid
\$1.50

MAY 1 2 10 PM '63

ORIGINAL

J. J. REEF'S
C. C. P. & C. S.
RICHLAND COUNTY, S. C.

John E. ...

WHEREAS, the South Carolina Electric & Gas Company owns a hydro electric project designated in the files of the Federal Power Commission as Project No. 516, and certain lands adjacent thereto, and has received permission from the Federal Power Commission to deed certain of these lands, including the tract hereunder more fully described and delineated, free and clear of all project purposes except flowage rights, said permission being contained in a letter dated January 27, 1954, copy of which is hereto annexed as Exhibit "B".

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the SOUTH CAROLINA ELECTRIC & GAS COMPANY, in the State aforesaid, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid at and before the sealing of these presents, by Betty A. Thompson in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said Betty A. Thompson subject to the right of the Grantor, its successors and assigns, through its servants or agents, to have the right of ingress, egress and access in, to, over, across and out of the property herein conveyed for malaria control and other corporate purposes, and subject also to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height and size and necessary spillways on the Saluda River at or near Dreher's Shoals, whether such damage is caused by the flooding of the lands or injury to the drainage thereof, or by storage of water, or for any

FIDAVIT

EXHIBIT

State of South Carolina
Identify that this is a true and correct copy
Date 10-17-2014
Register of Deeds
Richland County



other reason whatsoever, and the Grantee herein, for herself and for her heirs and assigns, hereby expressly releases the Grantor, its successors and assigns from any and all liability for any and all damages that may be caused to said parcel or tract of land as aforesaid.

All those certain pieces, parcels, or tracts of land situate, lying and being in the County of Richland, State of South Carolina, bounded on the north by lands of Thompson, on the east by lands of Works, on the south by lands of South Carolina Electric & Gas Company, and on the west by lands of Thompson, and being more particularly described as follows:

Parcel B

Beginning at an iron pipe on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands of Works, thence leaving the PBL and running along said property line S 58° 33' W for a distance of 112.0 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour N 65° 00' W for a distance of 216.8 feet, more or less, thence S 67° 23' W for a distance of 115.2 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N 20° 15' W for a distance of 130.0 feet, more or less, where the PBL intersects the old property line between lands formerly of Kleckley and lands formerly of McCarthy, thence leaving the PBL and running along said old property line N 85° 08' E for a distance of 218.8 feet, more or less, where the line again intersects the PBL of South Carolina Electric & Gas Company, thence following the PBL S 60° 00' E for a distance of 260.0 feet, more or less, to point of beginning.

Containing 0.98 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Kleckley under deed dated January 14, 1928, Option #627.

Parcel C

Beginning at a point on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the old property line between lands formerly of McCarthy and lands formerly of Mrs. J. W. Kleckley, thence following the PBL N 20° 15' W for a distance of 51.7 feet, more or less, to a concrete monument, thence N 66° 18' E for a distance of 114.7 feet, more or less, to a concrete monument, thence S 60° 00' E for a distance of 150.8 feet, more or less, where the PBL again intersects the old property line between lands formerly of McCarthy and lands formerly of Mrs. J. W. Kleckley, thence leaving the PBL and running along said old property line S 85° 08' W for a distance of 218.8 feet, more or less, to point of beginning.

Containing 0.28 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by W. F. McCarthy under deed dated January 12, 1928, Option #607.

Containing in the aggregate 1.26 acres, more or less, all of which is further delineated on Partial Plat of Lands of Mrs. J. W. Kleckley and W. F. McCarthy, Drawing #516-51 dated October 20, 1959, revised July 27, 1960, hereto annexed and made a part hereof as Exhibit A.

Reserving, however, an easement for a road running generally along the northeastern boundary of the afore described tracts.

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 Betty A. Thompson, her Heirs and Assigns forever, subject to the rights above reserved to the Grantor, its successors and assigns.

And the said SOUTH CAROLINA ELECTRIC & GAS COMPANY does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Betty A. Thompson, her Heirs and Assigns, against itself and its successors lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF the SOUTH CAROLINA ELECTRIC & GAS COMPANY has caused these presents to be executed in its name by F. R. McKeekin, its Vice President, and by E. N. Simpson, its Secretary and its corporate seal to be hereto affixed this 28TH day of OCTOBER in the year of our Lord, one thousand nine hundred and sixty and in the one hundred and eighty fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and
Delivered in Presence of:

SOUTH CAROLINA ELECTRIC & GAS
COMPANY

Barbara D. Brin
Witness

By F. R. McKeekin
Vice President

E. N. Simpson
Witness

E. N. Simpson
Secretary

CORPORATE SEAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PERSONALLY appeared before me BARBARA D. BLAIR
who, on oath, says that he saw the within-named SOUTH CAROLINA
ELECTRIC & GAS COMPANY by F. R. McKeekin, its Vice President,
and E. M. Simpson, its Secretary, sign the within Deed, and
the said Corporation, by said officers, seal said Deed, and
as its act and deed, deliver the same, and that he with
- H. M. BRYANT witnessed the execution thereof.

Barbara D. Blair
Witness.

NOTARIAL SEEN sworn to before me, this 28TH
day of OCTOBER A.D., 1960.

Blair L. Walsley
Notary Public for South Carolina

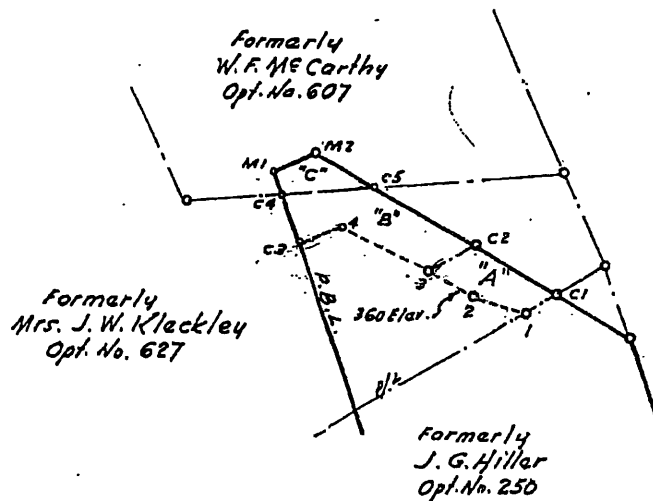
My commission expires at the
pleasure of the Governor.

Richland County

PARCEL "A", 0.48 Acre		
From-To	Bearing	Dist.
C1 1	S 61° 02' W	84.0'
1 2	N 72° 34' W	130.4'
2 3	N 58° 53' W	112.4'
3 C2	N 58° 33' E	112.0'
C2 C1	S 60° 00' E	229.0'

PARCEL "B", 0.98 Acre		
From-To	Bearing	Dist.
C2 3	S 58° 33' W	112.0'
3 4	N 65° 00' W	216.8'
4 C3	S 67° 28' W	115.2'
C3 C4	N 20° 15' W	130.0'
C4 C5	N 85° 08' E	218.8'
C5 C2	S 60° 00' E	260.0'

PARCEL "C", 0.28 Acre		
From-To	Bearing	Dist.
C4 M1	N 20° 15' W	51.7'
M1 M2	N 66° 48' E	114.7'
M2 C5	S 60° 00' E	150.6'
C5 C4	S 85° 08' W	218.8'



Parcel "A" = 0.48 Acre
 " "B" = 0.98 "
 " "C" = 0.28 "

EXHIBIT "A"

THIS MAP IS A PART OF THE APPLICATION FOR AN
 AMENDMENT OF PLANS FOR PROJECT NO. 516
 MADE BY THE UNDERSIGNED THIS _____ DAY OF
 _____ 1960

SOUTH CAROLINA ELECTRIC & GAS CO.

BY _____
 VICE PRESIDENT

SOUTH CAROLINA ELECTRIC & GAS CO.
 COLUMBIA, S. C.

Partial Plot of Lands of
 Mrs. J. W. Kleckley, Opt. No. 627 &
 W. F. McCarthy, Opt. No. 607

DATE: 10-20-59 REV. 7-27-1960.

SCALE: 1" = 400' OPTS. NO. 607 & 627

**PLAINTIFF'S
 EXHIBIT**

10
 4-28-15

15-5-51
 RK

516-51

Book 11431-18		
2014071830	10/2/2014 16:25:21:743 Corrective Deed	
Fee: \$10.00	County Tax: \$0.00	State Tax: \$0.00
2014071830 John T. Hopkins II Richland County R.O.D.		

STATE OF SOUTH CAROLINA)

CORRECTIVE DEED

COUNTY OF RICHLAND)

DEED BOOK 1936, PAGE 1081
(NO TITLE EXAMINATION PERFORMED)

WHEREAS, Grantor conveyed certain real property to Grantee by deed dated March 17, 2014 and recorded on April 1, 2014 in the Richland County Register of Deeds in Deed Book 1936 at Page 1081. Said Deed contained a scrivener's error in the legal description and required clarification with regard to the Grantee party.

KNOW ALL MEN BY THESE PRESENTS, THAT HAMILTON DUNCAN (hereinafter referred to as the "GRANTOR"), in the State aforesaid, for and in consideration of FIVE DOLLARS (\$5.00) DOLLARS, LOVE AND AFFECTION to the Grantor in hand paid at and before the sealing of these presents by HAMILTON DUNCAN AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF CHRISTINE A. DUNCAN, Richland County Case No. 2012-ES-40-1525, (hereinafter referred to as the "GRANTEE"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Grantor any and all of his interest in the following property:

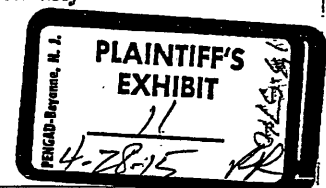
All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in the R.M.C. Office for Richland County in Plat Book 52 at Page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay, Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 207.84 feet; EAST by Silver Point Road, S40-2265, for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or little less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') foot strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at Page 150, being more particularly shown on the plat above referred to.

Richland County Register of Deeds

John T. Hopkins II

State of South Carolina
I certify that this is a true and correct copy
Dated 10/8/2014
Register of Deeds
Richland County



This being the same property deeded to Hamilton Duncan and Christine A. Duncan by deed of A. Charles Craft, III and Manita B. Craft dated June 28, 2002 and recorded in the Register of Deeds Office for Richland County on July 1, 2002 in Book 680 at Page 383.

TMS# 01411-02-03

Grantee's Address: The Estate of Christine A. Duncan
c/o Hamilton Duncan as Personal Representative
1429 Quarrier Street, Apt. 4
Charleston, WV 25301

This conveyance is subject to all easements conditions and restrictions of record.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any wise incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee and Grantee's Successors and Assigns.

WITNESS the Hand and Seal of the Grantor, this 24 day of September, 2014.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

[Signature]
Witness

[Signature]
Hamilton Duncan, Grantor

[Signature]
Witness

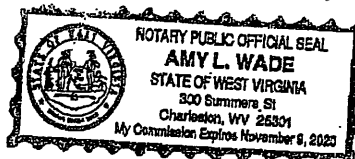
STATE OF WEST VIRGINIA)
COUNTY OF Kanawha }

PROBATE

I, a Notary Public for West Virginia, do hereby certify that Hamilton Duncan, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 24 day of September, 2014.

Amy L. Wade
Notary Public for West Virginia
My Commission Expires: 11-9-2020



Instrument: 2002053188

Book/Page: R 680 : 383

Date/Time: 07/01/2002 08:47:13:797

Document: 06

Book 00680-0383
 2002053188 07/01/2002 08:47:13:79
 Fee: \$10.00 County Tax: \$180.40 State Tax: \$426.40



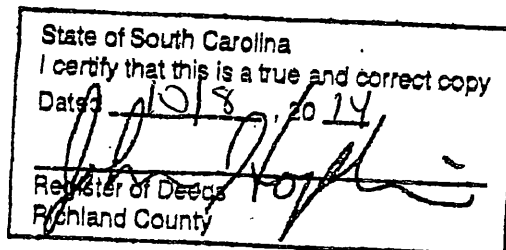
STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

GENERAL WARRANTY DEED

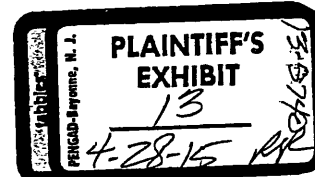
KNOW ALL MEN BY THESE PRESENTS, That WE, A. CHARLES CRAFT, III and MANITA B. CRAFT, for and in consideration of One Hundred Sixty-four Thousand and no/100 (\$164,000.00) dollars to me paid by HAMILTON DUNCAN and CHRISTINE A. DUNCAN, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said HAMILTON DUNCAN and CHRISTINE A. DUNCAN, as joint tenants with rights of survivorship, and not as tenants in common, all our right title and interest in the following described property, to wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in the R. M. C. office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay, Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 207.84 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.



DeBose law



488 John G. Norms
Said lands are identical to the lands described in that certain deed from Jay Clark Case to A. Charles Craft, III and Manita B. Craft, dated December 15, 1995 and found recorded in the RMC office for Richland County in Deed Book 1293 at page 688.

TAX MAP # 01411-02-03

ADDRESS OF GRANTEE: 1312 Silver Point Road, Chapin, SC 29036

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said HAMILTON DUNCAN and CHRISTINE A. DUNCAN, as joint tenants with rights of survivorship, and not as tenants in common.

And WE, A. CHARLES CRAFT, III and MANITA B. CRAFT do hereby bind ourselves and our Heirs and Assigns to warrant and forever defend all and singular the said premises unto the said HAMILTON DUNCAN and CHRISTINE A. DUNCAN their Heirs and Assigns, against ourselves and our Heirs and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

NOTARY DEED

WITNESS our Hands and Seals this 28th day of June,
in the year of our Lord Two thousand Two and in the two hundred
and twenty-sixth year of the Sovereignty and Independence of
the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Witness

[Signature]
A. CHARLES CRAFT, III

[Signature]
Witness

[Signature]
MANITA B. CRAFT

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

ACKNOWLEDGMENT

S. C. Code §30-5-30

(Effective January 1, 1995)

I, Beryl Kay, a Notary Public for
the State of South Carolina, do hereby certify that A. CHARLES
CRAFT, III and MANITA B. CRAFT, personally appeared before me
this day and acknowledged the due execution of the foregoing
instrument.

WITNESS my hand and seal this 28 day of June,
2002.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: _____

316 20
150.70
TITLE TO REAL ESTATE D BK 1293 PAGE 688

Dec 19 3 39 PM '95
RICHLAND COUNTY
CLERK OF COURTS
PLAT BOOK 52

KNOW ALL MEN BY THESE PRESENTS, That Jay Clark Case (hereinafter called "Grantor"), for and in consideration of the sum of One Hundred Thirty-seven Thousand and No/100ths (\$137,000.00) Dollars to the Grantor in hand paid at and before the sealing of these presents, by A. Charles Craft, III, and Manita B. Craft of 1312 Silver Point Road, Chapin, SC 29036 (hereinafter called "Grantees") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the Grantees, their heirs, successors and assigns:

ALL that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being in the County of Richland, State of South Carolina, containing .99 acres, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in the office of the R.M.C. for Richland County in Plat Book 52, page 1316, and being further shown on a Plat prepared for A. Charles Craft, III and Manita B. Craft, by Hussey, G., Bell & DeYoung, Inc., dated December 13, 1995, to be recorded, and according to said latter plat being bounded as follows, to-wit: On the North by property n/f of Drasites for a distance of 207.84 feet; on the East by Silver Point Road for a distance of 208.93 feet; on the South by property n/f of Biernaski for a distance of 208.73 feet; and on the West by property n/f of Drasites for a distance of 208.47 feet, all measurements a little more or less.

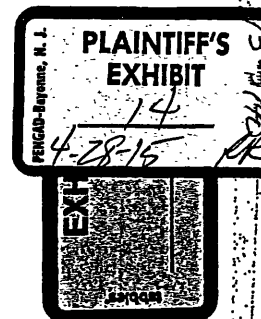
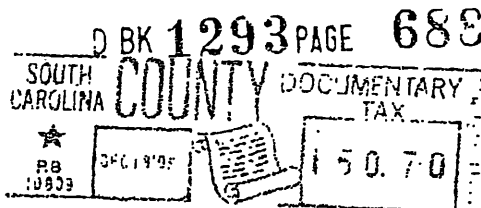
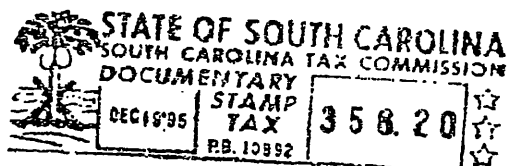
This being the same property conveyed to the Grantor by Woodberry Utilities recorded in the Office of the RMC for Richland County in Deed Book D393 page 150.

TMS # 1411-2-3

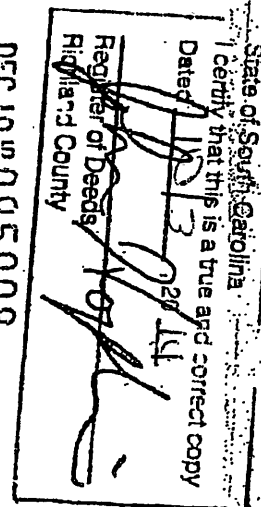
Also:

That certain non-exclusive easement for ingress and egress over a 20 foot strip from the above described property to the 360 foot contour of Lake Murray, said easement is described in that certain deed to the Jay Clark Case from Woodberry Utilities, Inc. recorded in the Office of the RMC for Richland County in Deed Book D393 page 150, and shown on the Plat prepared for Jay Clark Case by Site Consultants and recorded in the Office of the RMC for Richland County in Plat Book 52 page 1316.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.



DEC 19 1995 095008



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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantees, their Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantees, their Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

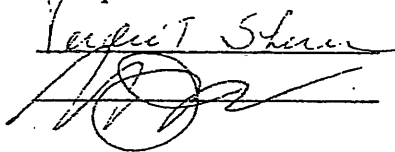
Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: December 15, 1995

 (SEAL)
Jay Clark Case

Sealed, signed and delivered
in the presence of

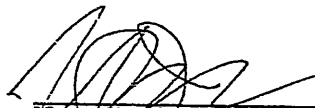


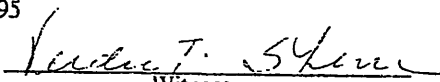
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me December 15, 1995

 (SEAL)
Notary Public for South Carolina
My commission expires: 7/23/2001


Witness

1399
715

D 393 HCF 147

CANCELLED
AUG 3 3 51 PM '76
REGISTER OF
MEETING PLACES
RICHLAND COUNTY, SC
CLARA L. BARTLETT

The State of South Carolina,
COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS, That

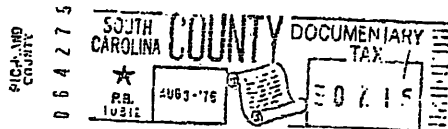
WOODBERRY UTILITIES, INC.

in the State aforesaid, for and in consideration of the sum of
Sixty one hundred Dollars
to it in hand paid at and before the sealing of these presents, by Jay Clark Case
in the State aforesaid, (the receipt whereof is hereby acknowledged)
has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said
Jay Clark Case

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a one acre tract on a plat prepared for R. J. Marsh, Inc. by Douglas E. Platt, Sr. dated March 25, 1976, and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road # S-40-2265 whereon it measures 208' feet; On the Southeast by property now or formerly of SC&S Co. whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; be all measurements a little more or less.

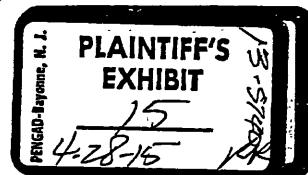
Being a portion of the premises heretofore conveyed to the grantor herein by deed from Betty A. Thompson dated August 14, 1973, and recorded in Richland County Clerk's office in Deed Book D289 at page 790.

GRANTEE'S ADDRESS : P.O. Box 478
WHITE ROCK, S.C.
29177



State of South Carolina
I certify that this is a true and correct copy
Dated AUG 3 1976
[Signature]
Register of Deeds
Richland County

D 393 HCF 147



D 393 PAGE 148

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

Jay Clark Case, his

Heirs and Assigns forever.

And the said Woodberry Utilities, Inc.

doe hereby bind itself

and its successors, to warrant and forever defend all and singular the said premises unto the said Jay Clark Case Heirs and Assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF

Woodberry Utilities, Inc.

has caused

these presents to be executed in its name by

R. J. Marsh

its

(Insert name of President or Vice-President)

President, and by

(Insert name of Secretary or Treasurer)

its

and its corporate seal to be hereto affixed this

28th

day of July

in the year of our Lord, one thousand nine hundred and

Seventy-Six

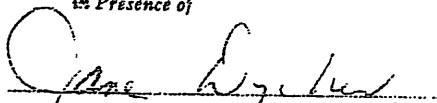
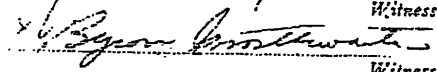
and in the ~~87XX~~

~~XXXXXX~~ Two Hundredth and First

year of the Sovereignty and Independence of the United

States of America.

Signed, Sealed and Delivered
in Presence of


Witness

Witness

Woodberry Utilities, Inc.

(Seal)

By

R. J. Marsh

President.

Secretary or Treasurer.

D 393 PAGE 148

The State of South Carolina,
COUNTY OF Richland

PERSONALLY appeared before me Jane Dyches
who, in oath, says that he saw the within-named Woodberry Utilities, Inc.
(Insert name of Corporation)

by R. J. Marsh
(Insert name of President or Vice President) its

President and its
(Insert name of Secretary or Treasurer)

sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the same, and that he with Byron Crosthwaite witnessed the
(Insert name of other Witness) execution thereof.

[Signature]
(Witness)

SWORN to before me, this 28th day of July, A. D. 1976

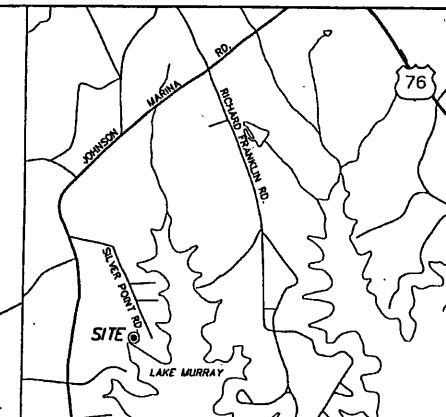
[Signature]
Notary Public, S. C. (Seal)
My Commission Expires: 8-24-80

LINE TABLE		
LINE	LENGTH	BEARING
L1	24.66	N 60°59'32" E
L2	21.03	N 61°58'39" E
L3	20.10	S 22°11'22" E
L4	18.82	S 61°58'39" W
L5	24.74	S 60°59'32" W
L6	23.41	N 58°55'09" W

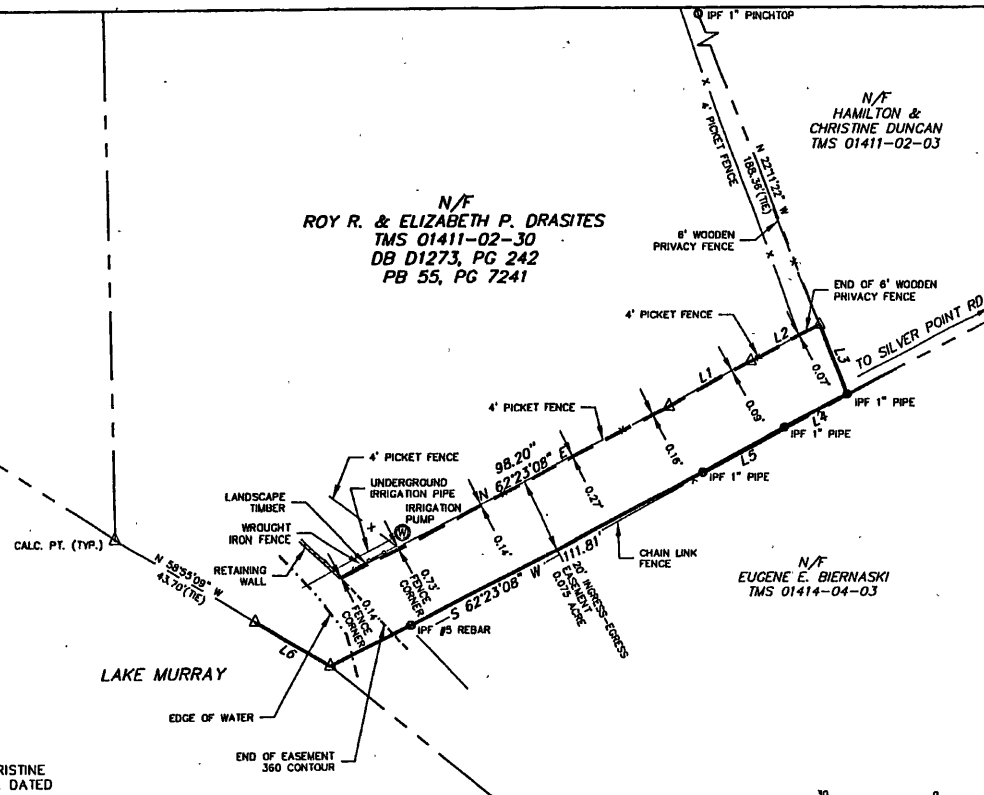
N/F
ROY R. & ELIZABETH P. DRASITES
TMS 01411-02-30
DB D1273, PG 242
PB 55, PG 7241

N/F
HAMILTON &
CHRISTINE DUNCAN
TMS 01411-02-03

N/F
EUGENE E. BIERNASKI
TMS 01414-04-03



VICINITY MAP
SCALE: 1"=2000'



NOTE:

4' PICKET FENCE, WROUGHT IRON FENCE AND RETAINING WALL LIE OUTSIDE OF EASEMENT AREA.

REFERENCES:

EXHIBIT SURVEY PREPARED FOR HAMILTON AND CHRISTINE A. DUNCAN BY CAROLINA SURVEYING SERVICES INC. DATED DECEMBER 13, 2013.

PLAT PREPARED FOR ROY R. & ELIZABETH P. DRASITES BY BOSTICK SURVEYING DATED OCTOBER 25, 1999, REVISED JUNE 6, 2006.

REVISED APRIL 3, 2014 TO CHANGE EASEMENT.



BOSTICK SURVEYING

437 PITNEY ROAD
COLUMBIA, SOUTH CAROLINA 29212
(803) 798-1113

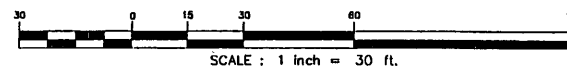
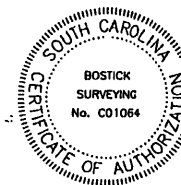
EASEMENT MAP PREPARED FOR

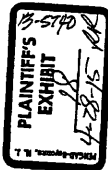
ROY R. DRASITES & ELIZABETH P. DRASITES

I HEREBY STATE THAT 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.

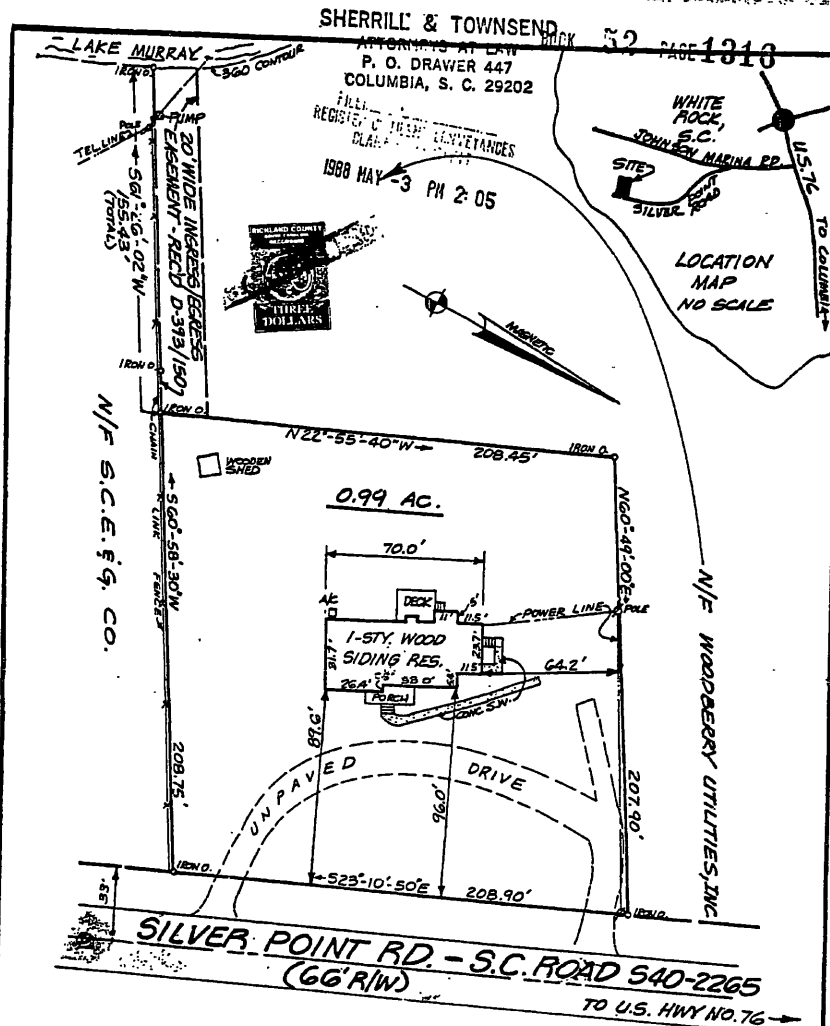
Carl W. Bostick 4/4/14
CARL W. BOSTICK, P.L.S. REG. NO. 4786
DATE: FEBRUARY 3, 2014 JOB #3623

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND





State of South Carolina
I certify that this is a true and correct copy
Dated 10/3/14, 2014
Register of Deeds
Richland County
[Signature]



PLAT PREPARED FOR:

JAY CLARK CASE

IN RICHLAND COUNTY, NEAR WHITE ROCK, S.C.

NOTES:

1. THE SAME BEING ALSO SHOWN ON PLAT FOR J.C. CASE BY DOUGLAS E. PLATT, SR., P.L.S. DATED MAY 18, 1978.
2. RICH. CO. TMS. 01411-02-03.

PLAT BOOK: Y Page: 1910

CERTIFICATION

I HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE FIELD SURVEY IS 1:10,000 AS SHOWN HEREON, AND THE AREA WAS DETERMINED BY THE COORDINATE METHOD OF AREA DETERMINATION; AND MONUMENTS HAVE BEEN PLACED AS SHOWN HEREON. I ALSO CERTIFY, TO THE BEST OF MY KNOWLEDGE, THAT THERE ARE NO ENCROACHMENT OR PROJECTIONS OTHER THAN SHOWN, AND THAT THE AREA (S) (IS NOT) LOCATED IN A FLOOD HAZARD AREA.

[Signature]
LUCIUS D. COBB, SR.
S.C. PROFESSIONAL LAND SURVEYOR NO. 6039

BOOK 52 PAGE 1316

SCALE: 1" = 50'

DATE: APRIL 25, 1988



SITE CONSULTANTS, INC.
360 CHRIS DRIVE / P.O. BOX 5020
CAYCE / WEST COLUMBIA, S.C. 29171
PHONE: (803) 796-8977

EXHIBIT

N.D. "M-109" P.66.41-42

TMS 01411-02-03

LS 88-494

Silver Point Rd.
S-40-2265
66' R/W

N/F
Eugene E. Biernaski
TM# R01414-04-03

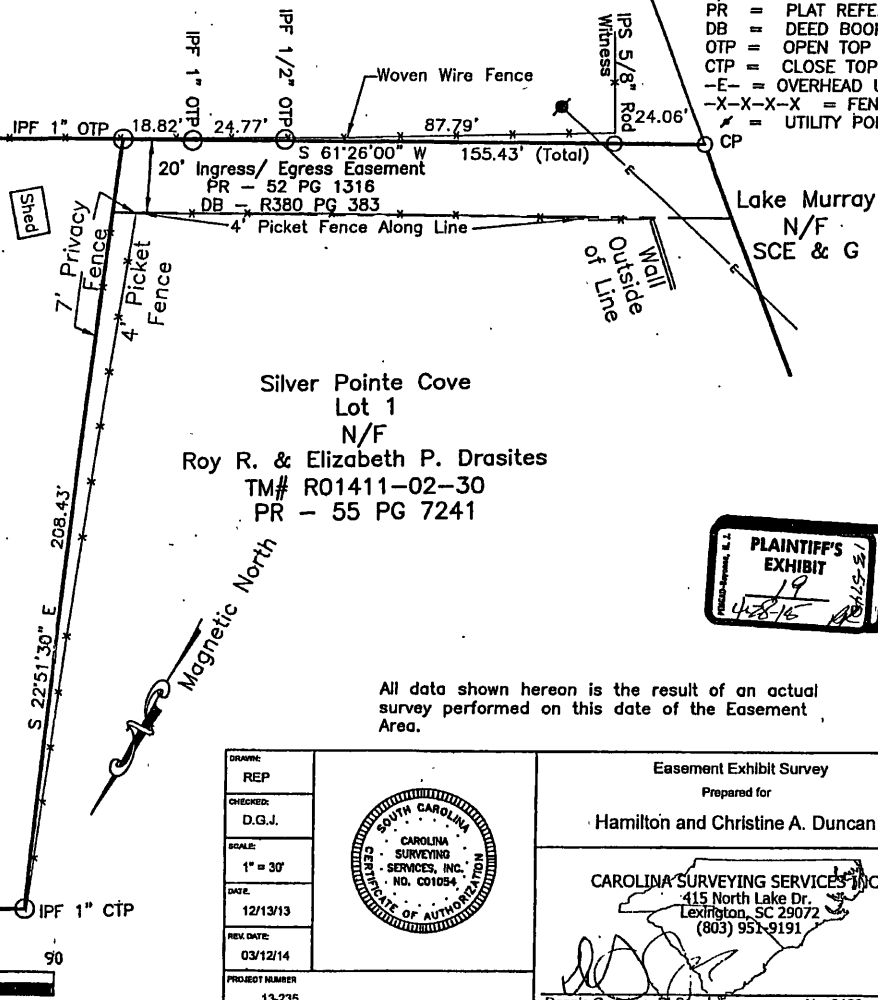
N/F
Hamilton & Christine Duncan
TM# R01411-02-03
PR - 52 PG 1316

Silver Pointe Cove
Lot 1
N/F
Roy R. & Elizabeth P. Drasites
TM# R01411-02-30
PR - 55 PG 7241

Plat Reference:
Plat prepared for Jay Clark Case, dated April 25, 1988 and
recorded in Plat Bookd 52, page 1316.
Plat prepared for A. Charles Craft & Manita B. Craft, dated
December 13, 1995, by Hussey, Gay, Bell & Deyoung, Inc.

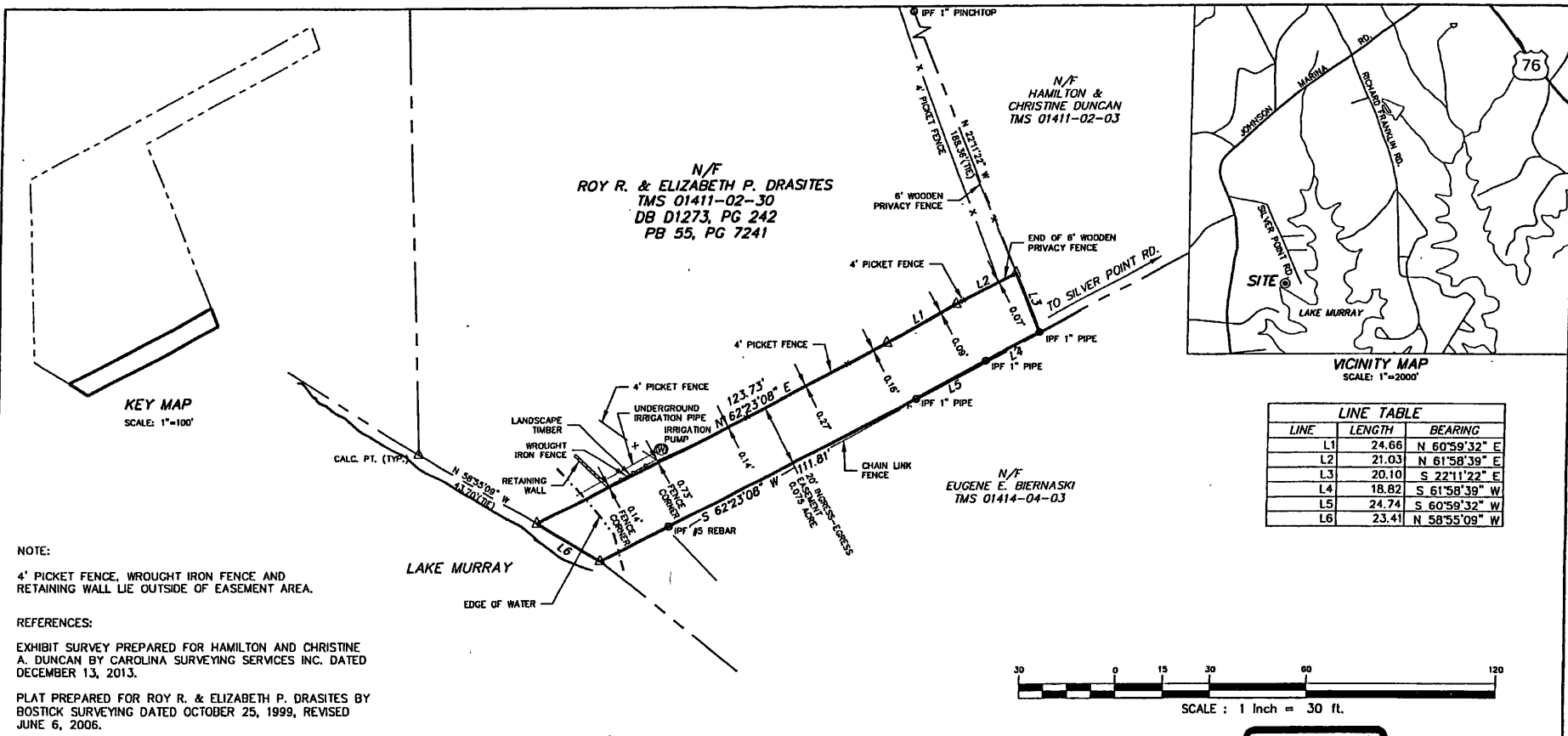
State of South Carolina
County of Richland
TM# R01411-02-03
R01411-02-30

LEGEND:
IPF = IRON PIN FOUND
IPS = IRON PIN SET
CP = CALCULATED POINT
N/F = NOW OR FORMERLY
PR = PLAT REFERENCE
DB = DEED BOOK
OTP = OPEN TOP PIPE
CTP = CLOSE TOP PIPE
-E- = OVERHEAD UTILITIES
-X-X-X- = FENCE
/ = UTILITY POLE



All data shown hereon is the result of an actual
survey performed on this date of the Easement
Area.

DRAWN: REP			Easement Exhibit Survey	
CHECKED: D.G.J.			Prepared for Hamilton and Christine A. Duncan	
SCALE: 1" = 30'			CAROLINA SURVEYING SERVICES, INC. 415 North Lake Dr. Lexington, SC 29072 (803) 951-9191	
DATE: 12/13/13			Dennis G. Johns, P.E.	
REK DATE: 03/12/14		PROJECT NUMBER 13-235		No. 8102



BOSTICK SURVEYING
437 PITNEY ROAD
ABIA, SOUTH CAROLINA 29212
(803) 798-1113



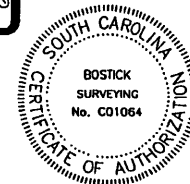
ROY R. DRASITES & ELIZABETH P. DRASITES

I HEREBY STATE THAT 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.

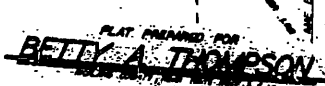
Carl W. Bostick 2/5/14
CARL W. BOSTICK, P.L.S. REG. NO. 4786
DATE: FEBRUARY 3, 2014 JOB #3623



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND



FILED
APR 19 4 46 PM '80
ADAMS W. HEINTON
C. P. & B. B.
HIGHLAND COUNTY, A. S.



SCALE 1" = 200'

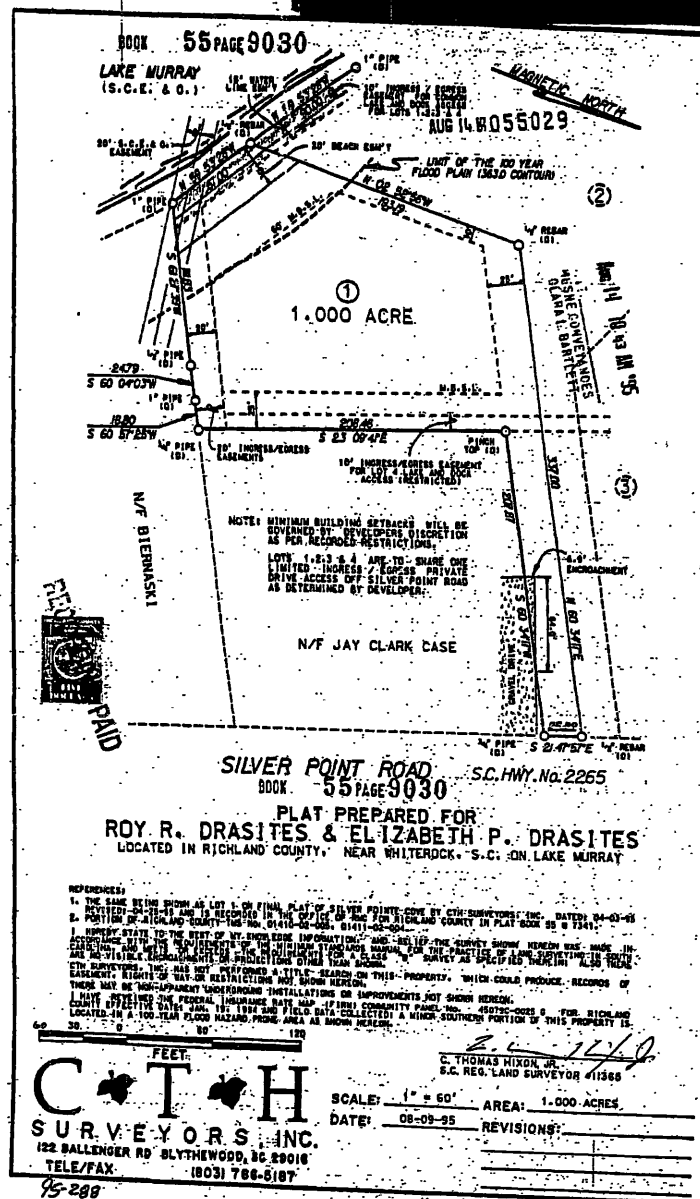
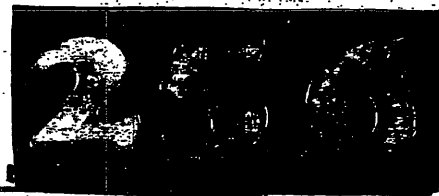
MARCH: 22, 1961

McMILLAN ENGINEERING COMPANY

State of South Carolina
I certify that this is a true and correct copy
Dated 10/13/2014
Registered Deeds
Richland County

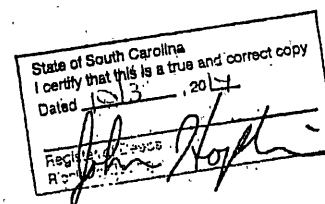
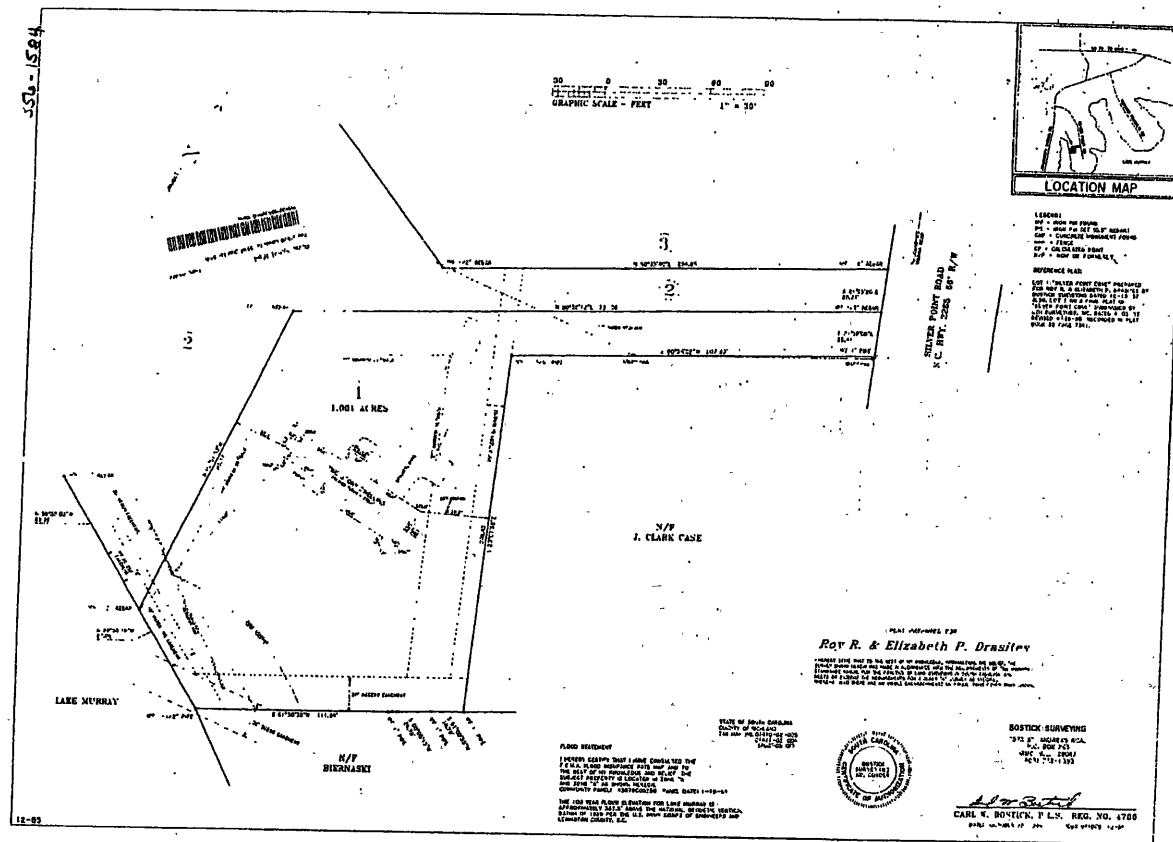
PLAINTIFF'S EXHIBIT
21
4-28-15 RK
13-5740-51

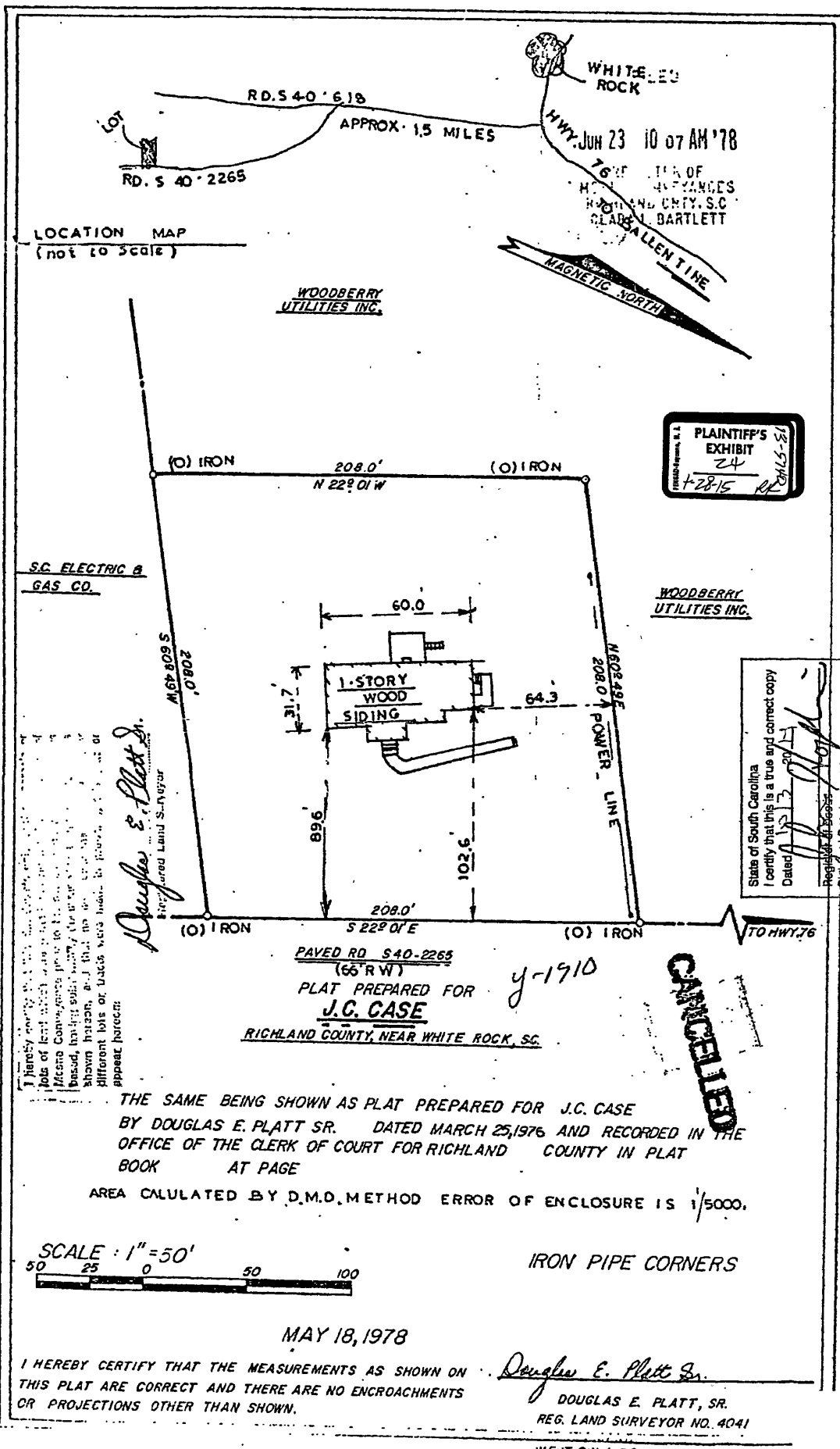




Richland County
Register of Deeds
Date: 10/13/95
I certify that this is a true and correct copy
State of South Carolina









ASSOCIATED E & S, INC.

800 Violet Street • P.O. Box 4287
West Columbia, SC 29171
(803) 791-1550

Court Case C/A No.: 2013-CP-40-5740

Hamilton Duncan, Individually and Hamilton Duncan, as Personal Representative of the Estate
of Christine A. Duncan

Plaintiff,

vs.

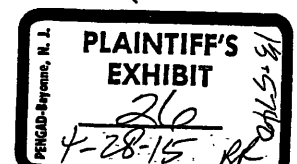
Roy Drasites and Elizabeth Drasites,

Defendants.

To Whom it May Concern,

After reviewing all of the plats and the easement deed which includes the following:

1. Easement from Woodberry Utilities, Inc. to Jay Clark Case, dated July 28, 1976.
2. Plat for J. C. Case by Douglas E Platt Sr. dated, May 18, 1978.
3. Plat of Woodtrail Subdivision by Civil Engineering of Columbia, dated May 14, 1981.
4. Plat by Site Consultants, Inc. for Jay Clark Case, dated April 25, 1988.
5. Plat by CTH Surveyors, Inc. for Roy R. Drasites & Elizabeth P. Drasites, dated August 9, 1995.
6. Plat of Silver Point Cove by CTH Surveyors, Inc., dated April 3, 1995.
7. Plat for A. Charles Craft & Marlita B. Craft by Hussey, Gay, Bell & Deyoung, Inc., dated
December 13, 1995.
8. Plat for Roy R. & Elizabeth P. Drasites by Bostick Surveying, dated April 23, 1999, October 21,
1999, June 6, 2006, & February 3, 2014.
9. Plat for Katherine W. Bullock by Bostick Surveying, dated January 13, 2006.



10. Subdivision of Silver Pointe Cove by Midlands Drafting Services, dated March 20, 1995.

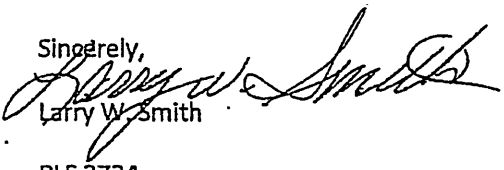
11. Reclamation Plan for Bullock, Macqueen & Drasites - Submitted for permit to SCE&G.

12. Easement Exhibit Survey for Hamilton and Christine A. Duncan by Carolina Surveying Services, Inc., dated December 13, 2013, March 12, 2014 & October 9, 2014.

It is my opinion that the intent was to give access to the lake to Mr. Case. The deed says to the 360 degree, which anyone that lives on Lake Murray would know that, this is the 360' contour (Which is the high water elevation for Lake Murray).

Woodberry Utilities, Inc. could not give an easement beyond the 360' contour because their land stops at the same contour. SCE&G still owns land below the 360' contour at this site. If Mr. Case did not have rights to the lake no one does since their land also stops at the 360' contour.

Sincerely,


Larry W. Smith

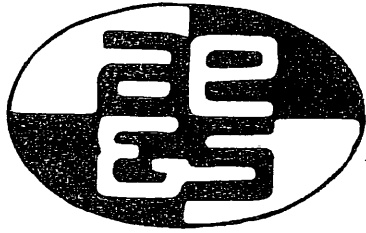
PLS 3724

cc: Randy Davis - Davis Frawley Law Firm

W. Taylor Stanley - Callison Tighe & Robison, LLC

Carl Bostick - Bostick Surveying

Dennis Johns - Carolina Surveying Services Inc.



ASSOCIATED E & S, INC.

800 Violet Street • P.O. Box 4287

West Columbia, SC 29171

(803) 791-1550

December 1st, 2014

To:

James Randall Davis

Davis Frawley Attorneys at Law

P.O. Box 4489

Lexington, SC 29071

RE: Hamilton Duncan V. Roy Drasites and Elizabeth Drasites (File Number 29988)

Mr. Davis:

First of all I was not aware that I had to get either of the surveyors to agree to my opinion. I was told that both surveyors agreed to have me make an opinion due to having worked for the Power Company for thirteen years, surveying their fringe land. After I formed Associated E & S, Incorporated I still went on to survey fringe land for them on Lake Murray and still do so.

Secondly, I was not given a copy of page five that was included in the letter you sent to me dated November 13th, 2014. The location of the 360 contour is shown on the plat by Civil Engineering of Woodtrail Subdivision dated May 14th, 1981. This is also the same as the 1.26 acres Ms. Betty A Thompson bought from the Power Company in 1960. Every surveyor after the 1981 plat shows the same location. The plat for Betty A Thompson was dated October 20th 1959 and revised July 27th, 1960 by SCE&G.

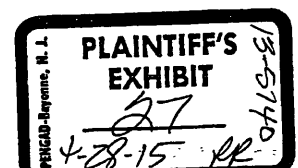
Should you have any questions or concerns you may contact us at 803-791-1550 or via e-mail at ls3724@hotmail.com.

Thanks,

Larry W. Smith

PLS# 3724

cc: W. Taylor Stanley, Carl Bostick, Dennis Johns



Carolina Surveying Services, Inc.

*Dennis G. Johns, PLS
415 North Lake Dr.
Lexington, SC 29072
(803) 951-9191 Phone
(803) 951-3389 Fax
dennisj@carolinasurveying.com*

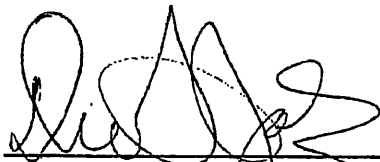
November 25, 2014

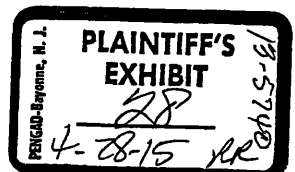
Court Case C/A No.: 2013-CP-40-5740
Hamilton Duncan vs. Roy and Elizabeth Drasites

To Whom It May Concern:

In regard to a letter from Larry W. Smith, PLS concerning the above mentioned Court Case I confirm that I (Dennis G. Johns, PLS) am in agreement with his findings which is:

The access easement in question begins at the Plaintiffs property and continues across the entire property of the Defendants property.


Dennis G. Johns, PLS





Callison Tighe & Robinson, LLC
W. Taylor Stanley
1812 Lincoln St
P O Box 1390
Columbia SC 29202

June 30, 2014

Dear Mr. Taylor;

This letter is in response to your request for a permit to grade and remove soil on a 20 foot easement on the shoreline of Lake Murray.

The SCE&G Shoreline Management Plan (SMP) does not have a permit that would allow grading the soil or dirt along the shoreline below the 360 contour (high water mark) on Lake Murray. In addition SCE&G does not have any authority or jurisdiction above the 360 contour on Lake Murray where property owners own down to the 360 high water mark. Grading and soil disturbance above the 360 contour would be left up to the current property owner.

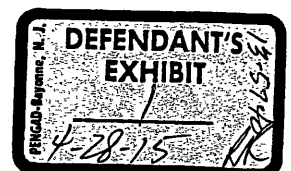
The Lake Murray Shoreline Management Plan (SMP) will not allow docks or boat ramps to be constructed on a 20 foot easement. To qualify for a dock or boat ramp the property would need to have minimum shoreline footage of 100 feet.

If you have any questions concerning the SCE&G shoreline regulations, please give me a call at (803) 217-9007 and I will be glad to meet with you at the site to discuss them.

I am returning your application and check for the Lake Murray permit.

Sincerely,

Tommy C. Boozer
Manager
Lake Management Programs





South Carolina Electric & Gas Company
Columbia, SC 29218
(803) 748-3000

December 4, 1998

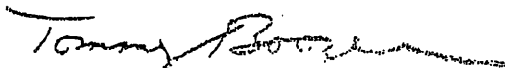
Mr. Robert G. Bullock
1308 Silver Point Rd.
Chapin, SC 29036

Dear Mr. Bullock:

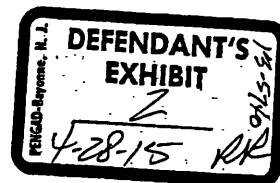
This is to advise that your application to excavate at Lake Murray has been approved. Please display the attached permit in the area of your activity.

For a final inspection please notify this office in writing of completion of the work.

Sincerely,


Tommy C. Boozer
Lake Management Programs

TCB/mrf
Attachments



DEFENDANT'S EXHIBIT 2

7.000 (7) ACPRF

20. INGRESS/EGRESS
EASEMENTS
S 23.09.41"
208.46
10. INGRESS/EGRESS EASEMENT FOR LAKE AND DOCK ACCESS RESTRICTED

SOUTH CAROLINA ELECTRIC & GAS CO.
LAKE MURRAY MANAGEMENT
VED AS SHOWN

APPROVED
DATE: 12/04/98

GRASS

Shoreline Activity Excavation
 Issuance Date 12/04/98
 Expiration Date 01/15/99

Lake Murray

Shoreline Management Program



Tommy Boorer
217-9221

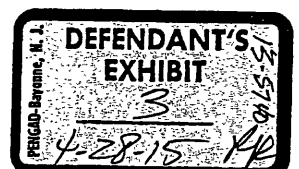


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IV. DOCKS.....	
V. BOAT RAMPS, MARINE RAILWAYS AND BOAT LIFTS.....	
VI. MOORINGS.....	
VII. EROSION CONTROL.....	
VIII. EXCAVATIONS.....	
IX. LAND USE.....	
X. WATER REMOVAL FROM THE LAKE.....	
XI. EFFLUENT DISCHARGES.....	
XII. GOVERNMENTAL CONSENTS.....	
XIII. GENERAL.....	

Lake Murray

Policies and Procedures

INTRODUCTION

Work of clearing the site for the Saluda River Hydroelectric Development was started in April of 1927 under a permit granted by the Federal Power Commission to the Lexington Water Power Company.

In July of 1930 Lake Murray reached an elevation of 300 feet. The following December, the first electric power, 10,000 kilowatts, was delivered. At the time of its completion, Saluda Dam was the largest earth dam in cubical content for power purposes in the world¹. The dam itself is 211 feet high and contains over 11 million cubic yards of material. Lake Murray is 41 miles long and 14 miles wide at its widest point and contains 763 billion gallons of water. It has a shoreline of approximately 650 miles including the islands.

Residents and visitors to Lake Murray are familiar with its fluctuating water levels. In the Saluda River watershed, about 75 percent of the normal rainfall comes in the first six months of the calendar year. The lake level can reach 360 feet; however the normal high lake level is usually reached in May at about 358 feet above mean sea level. When rainfall decreases during the summer months and the demand for power increases, the elevation begins to drop with a normal minimum of about 350 feet elevation coming in the fall of the year.

Lake Murray, over the years, has been, and still is, a major power generation source and provider of recreational and commercial resources for the residents and visitors of South Carolina.

In the late 1960's a rapid change in the character and rate of development of the lake began to take place.

As development increases, due primarily to Lake Murray's close proximity to the Columbia Metropolitan area, the very values that attract families and visitors in the first place could be destroyed unless the potential for environmental degradation is recognized by all parties concerned.

South Carolina Electric & Gas Company, (SCE&G) as owner and Licensee of Federal Energy Regulatory Commission Project No. 516, realizes the need for formulation of rules and regulations to promote and enhance the recreational potential of Lake Murray and protect its environmental quality while continuing to use Lake Murray as a major part of SCE&G's power production capabilities. All lake management policies are consistent with the regulations and requirements of the Federal Energy Regulatory Commission (FERC) under whose authority SCE&G owns and operates Lake Murray for the generation of power.

SCE&G's Lake Management Department is responsible for enforcing FERC directives regarding unauthorized uses of Lake Murray waters and land below the 360 foot contour elevation.

FERC directives require SCE&G to prevent or halt unauthorized actions by taking measures to stop such actions.

SCE&G has implemented a Shoreline Management Permitting Program (described in this booklet) to permit, upgrade, and properly maintain structures and facilities below the 360 contour. These regulations and inspection programs serve to maintain an environment at Lake Murray which has something to offer to everyone.

I. ENVIRONMENTAL POLICIES

1. General Policy and Purpose

a. The implementation by SCE&G of the Lake Murray Shoreline Management Program shall maintain and conserve the area's natural and man-made resources.

b. The purpose of the policy is to comply with the terms of the Project No. 516 License, the regulations and the orders of the FERC and to assist in providing a balance between recreation and environmental control.

2. Water Quality Standards

SCE&G will conduct a continuing water quality monitoring program to ensure that the waters of Lake Murray continue to be of an "A"

classification suitable for swimming, fishing and other water-related recreational activities.

3. Undeveloped Areas

SCE&G owned undeveloped land around the lake is managed by the Land Department. These properties will be maintained through a sound forest management program to ensure the health of the forest. Timber will be managed in a multiple use manner in compliance with the S. C. Best Management Practices to maintain a balance of quality watershed conditions, recreational opportunities, wildlife habitat and promotion of new timber growth.

II. PUBLIC FISHING, BOATING AND HUNTING

1. Fisheries Management

The South Carolina Department of Natural Resources maintains an annual stocking program during the months of April, May and June. Fisheries Management of the lake in future years will consist of annual checks of the population by predator stocking (striped bass). Approximately 20,000 Rainbow Trout are stocked in the Saluda River below the dam annually. State fishing and safety regulations are enforced by the South Carolina Department of Natural Resources.

2. Boating Safety

The boating laws of South Carolina are enforced by the South Carolina Department of Natural Resources Department on Lake Murray

3. Public Hunting

Approximately 6,225 acres of watershed land within and adjacent to Project No. 516 are leased to the South Carolina Department of Natural Resources as a part of the statewide

Game Management Program. This land is located adjacent to the western portions of Lake Murray and in many cases, adjacent to other privately held lands that are also in the management program. These public hunting areas are shown on Game Management Area Maps available through the South Carolina Department of Natural Resources..

III. PUBLIC LANDINGS

1. SCE&G Park Facilities

SCE&G presently maintains 12 parks on Lake Murray for a total of 56 acres. Each park provides a variety of recreational opportunities available to the public. Recreational activities include boat launching, fishing and picnicking. At the recreational facilities located on the north and south ends of the Lake Murray Dam a parking fee is charged to provide security and traffic control in congested areas. (Park season is from April 1 through September 30).

In addition to the existing 12 developed public parks, there are 65 islands in Lake Murray consisting of 220 acres that are available for public recreation.

2. Criteria for Establishing New Company Facilities

Additional park sites have been set aside by SCE&G. When public demand justifies the need for additional parks, these sites will be developed in cooperation with state and county agencies or independently by SCE&G.

3. Saluda River Access

Public boat ramps are provided on the north and south sides of the Saluda River approximately 1 mile below the dam where Hope Ferry Road once crossed the river. They can be reached from the south by Corley Mill Road and on the north by Bush River Road.

A canoe portage facility is located approximately seven miles below the Lake Murray Dam on the north side of the Saluda River off of Bush River Road.

4. Commercial Facilities

Public access to the lake is also provided at privately-owned facilities. Boat launching and other recreation activities are available.

5. S. C. Department of Parks, Recreation and Tourism

Dreher Island State Park provides boat ramps, camping, swimming, nature trails, sailing, and overlook areas. This 348 acre island is leased to PRT by SCE&G

IV. DOCKS

1. General

SCE&G requires that all docks, fixed, floating or combinations, be inspected by SCE&G agents to comply with Section IV, Paragraph 6, and that an inspection decal be prominently displayed on the approved dock.

2. Policy

SCE&G requires that anyone desiring to repair, replace, add to, or construct a dock must file an application before a permit will be issued prior to start of construction. Docks, whether fixed or floating must not interfere with surface water activities or navigation and must be compatible

with scenic values in the vicinity. Use of common docks will be encouraged where practical.

3. General Requirements

A minimum lot width of 100 feet along the 360 foot contour is required before an individual residential dock application will be considered.

Lots measuring less than 100 feet in width along the 360 contour requesting a dock, will be required to construct common docks with adjacent property owner(s). It is an applicant's responsibility to make arrangements with his neighbor(s) for common dock facilities. Common docks may accommodate up to five (5) individual lakefront property owners. A minimum distance of 100 feet is required between common docks and/or a common dock and an existing individual dock.

Lots measuring less than 100 feet in width in subdivisions established prior to 1989, where the adjacent lots have existing docks, may be considered for limited size docks.

If an existing lot having a permitted dock is subdivided, that dock permit will be canceled. A new permit will be issued only if the shoreline width requirement is met or if a common dock for all resulting lots is requested.

4. Watercraft Limitations

No watercraft exceeding 30 feet in length will be permitted to be permanently docked at a residential or common area dock.

Watercraft exceeding 30 feet must be docked at a multi-use docking facility

It is against both federal and state laws to discharge sewage from any description of watercraft into the waters of South Carolina.

5. Application Procedure for New Construction, Additions or Replacements

The applicant will be required to apply to SCE&G in writing and submit the following:

- a. Sketch showing location, design and dimensions of the proposed structure.
- b. Permitting fee required.
- c. Specific directions by land to applicant's property on Lake Murray.
- d. Plat of applicant's property reflecting, among other things, county tax map information..

6. Dock Specifications

- a. Private docks whether permanent, floating or a combination of both, may generally be up to 450 square feet in overall size (surface area) and 75 feet in length provided they do not interfere with navigation, ingress or egress to adjoining property or are in any manner hazardous. In some locations, such as narrow coves, the maximum size may not be permitted or docks may not be permitted at all. Floating docks attached to permanent docks may be moved out as the water level recedes, provided they do not interfere with adjacent property owner's access.
- b. A variance in the dimensions related to the length of docks may be granted in instances where conformity with existing structures would be practical and in cases where exceptions would be desirable due to curvature and/or slope of the shoreline. However, the effects on navigation and the aesthetic values of the surrounding area will control issuance of any variance.
- c. All permanent docks must be built horizontally between the elevation of 360 foot and 362 foot contour.

d. Docks must be located a minimum of 15 feet from adjacent property lines and the projected length should not encroach across the imaginary projected lot lines. The projection of the imaginary property line is a management tool to assist Lake Management Representatives and may be waived under certain circumstances. Common docks, between adjacent property owners, are encouraged. The sideline limitation of 15 feet will be waived for existing or proposed common use docks. A copy of the written agreement between participating property owners will be furnished to SCE&G. An acceptable form of agreement is available upon request.

e. Covers on docks are not permissible unless the covered portion is located within 15ft. of the 360 foot contour. Handrailings on docks are permissible, provided that the sides of docks are not enclosed so as to obscure cross-vision.

f. Sinks, toilets, showers, etc., or any type of equipment or construction which will create or cause any liquid or solid waste to be discharged into the waters of the lake will not be permitted.

g. Effective January 1, 1995, all new floating docks constructed on Lake Murray are required to use encased or encapsulated flotation. Exposed foam bead flotation billets, or metal drums will not be allowed. Foam bead flotation deteriorates, causing shoreline litter. It is subject to destruction by animals and becomes waterlogged.

The New regulation applies only to new dock construction. Existing docks will be required to install encapsulated flotation when the old existing flotation needs to be replaced.

h. Houseboats used for habitation may not be permanently moored at private docks. Permanent mooring must be at marinas with sewer pump-out and treatment facilities.

7. Common Dock Policy

Common docks are docks which provide lake access for two to five family residential lots. Common docks are encouraged for all lake property as an alternative to individual docks and will be required on property with poor access and/or limited lake frontage, or in such other circumstances that SCE&G deems appropriate. Property owners are encouraged to adopt the common dock concept to reduce the number of docks on the shoreline and limit congestion in heavily developed areas.

SCE&G does not guarantee water access. Each lot is affected by the existing contours of the lake bottom and the operation of the Saluda Hydro Electric Project. It is the applicant's responsibility to review the shoreline area where the dock is to be located and to apply the restrictions outlined in Section IV-6 above to ensure the dock will meet the applicant's needs and satisfy SCE&G's shoreline management requirements.

8. Commercial Dock Policy

The development and expansion of new or existing commercial docks will be negotiated on a case by case basis. The necessary Federal State and Local approved permits must be obtained before final approval by South Carolina Electric and Gas and the Federal Energy Regulatory Commission.

V. Boat Ramps, Marine Railways & Boat Lifts

1. Policy

Boat ramps, marine railways, or boat lifts cannot be constructed, replaced or added to without a permit from SCE&G. The use of boat ramps at public and semi-public facilities shall be encouraged in preference to construction of private ramps. Refer to Section IX - 2. concerning boatramps on fringeland.

X

2. Application Procedure

Applications for permits to construct, add to, or replace boat ramps, marine railways, boat lifts shall be submitted to SCE&G in writing and must include the following:

- a. Sketch showing location and dimensions of the proposed ramp, boat lift and/or marine railway.
- b. Permitting fee required.
- c. Specific directions, by land, to applicant's property on Lake Murray.

3. Boat Ramp, Boat Lift and/or Marine Railway Specifications

- a. Ramps will be constructed of concrete. Asphalt compounds or petroleum base products are prohibited.

b. All ramps should be located as not to interfere with neighboring property owners. Adjoining property owners are encouraged to agree to common use of the ramp. A copy of the written agreement between participating property owners will be furnished to SCE&G.

X

- c. Ramps may generally be up to 15 feet wide and required length to be functional. Public and semi-public ramps may be granted a variance.

d. Generally, marine railways to be constructed for access to the lake from facilities located above the 360 foot contour are permitted. Railways constructed below the 360 foot contour area restricted to two foot elevation above the natural lake basin.

e. Boat lifts should be located as not to interfere with the adjoining property owners' lake view. All boat lifts will be constructed adjacent to the owners' permanent dock and be a minimum of 15 feet from their property line. No covers are to be constructed over boatlifts.

VI. Moorings

South Carolina Electric & Gas Company's Shoreline Management 's Program does not permit mooring on the waters of Lake Murray.

VII. Erosion Control

1. Policy

No rip-rapping, seawalls or retainer walls will be constructed, replaced, repaired or added to without a permit from SCE&G.

2. Application Procedure

Applicants for permits for erosion control shall be submitted to SCE&G in writing and must include the following:

a. A copy of applicant's deed and plat to the property.

b. Area on plat where located and type of erosion control proposed.

c. Permitting fee required.

d. Specific directions by land, to applicant's property on Lake Murray.

3. Specifications

a. Rip-rapping

Rip-rapping for erosion control at the 360 foot contour and below will generally be permitted provided it is aesthetically acceptable and materials used have prior approval by SCE&G. (No concrete blocks, bricks, or building materials may be used as rip-rap below the 360 foot contour).

b. Seawalls or retainer walls

Seawalls or retainer walls for erosion control will be permitted provided they are constructed on the 360 foot contour. Earth fills below the 360 foot contour are prohibited.

4. Limited Brushing

Trees, bushes, and vegetation growing below the 360 foot contour on the shoreline of Lake Murray play an important role in the overall environmental condition of the Lake. The ecological impact the vegetation has on the fish and wildlife habitat is necessary to ensure a sound, healthy Lake environment. South Carolina Electric & Gas Company's Shoreline Management Plan permits limited removal of the shoreline vegetation for the construction and installation of docks. Please be advised that unauthorized removal of shoreline vegetation (button bushes, willow trees, hardwood, etc.) will result in the cancellation of the dock permit and revegetation of the shoreline will be required. Removal of merchantable timber may require reimbursement subject to valuation by SCE&G's Land Department. Property owners must contact South Carolina Electric & Gas Company's Lake Management Department prior to any removal of shoreline vegetation below the 360' contour.

VIII. Excavations

1. Policy

Excavation below the 360 foot contour is not permitted without authorization from SCE&G. All authorized excavations must be in accordance with SCE&G specifications and requirements which may include an environmental assessment plan or report.

2. Application Procedure

Applications for permits to excavate shall be submitted to SCE&G in writing and will include the following:

- a. A copy of applicant's deed and plat of property.
- b. Specific directions, by land, to applicant's property on Lake Murray.
- c. Drawing to scale of area to be excavated.
- d. Required local, state and federal permits. Lake Management Department of SCE&G will assist in preparation of required local, state and federal permits.
- e. An application for an excavation not exceeding 150 cubic yards can be processed by SCE&G personnel. Any commercial excavation or individual excavation exceeding 150 cubic yards must be processed through the U. S. Army Corps of Engineers and State agencies.
- f. Permitting fee required..

3. Excavation Specifications

- a. All excavating must be done directly in front of the permittee's lot.
- b. No excavation will be permitted when the excavation site is covered with water.

- c. All displaced soil must be moved above the 360 foot contour and must be stabilized and top seeded to prevent erosion.
- d. A 4 to 1 slope is the maximum slope allowed without rip rap. A 2 to 1 slope is permitted if rip-rap is installed.
- e. Excavations of wooded or vegetated areas located below the 360 foot contour is prohibited.
- f. No excavation will be permitted to alter the existing 360 contour.
- g. Excavation activities will be allowed only between October 1st of the current year and January 15th of the next year. Permits expire January 15 following the date of issuance

IX. LAND USE

1. Encroachments

Earth fills below the 360 foot contour are prohibited. Any that occurred prior to January 1, 1974, will be handled on a case by case basis.

2. Fringeland

Fringeland is that strip of land owned by SCE&G located between the 360 foot contour and the FERC Project Boundary Line. Fringeland is real estate and as such falls under the responsibility of the Land Department. The use of all fringeland is categorized under a Land Use Classification Plan. Fringeland under the Development Category is generally available for purchase by the adjoining back property owner subject to Land Department and FERC review and regulation. However, as landowner, the Company retains the discretion to determine the availability of parcels for sale on an individual basis. Residential landowners, who have property behind SCE&G fringeland will have the right of access by foot to and from the lake. However, they will not be allowed to encroach

with improvements, cut any trees or shrubs, place any water-oriented encroachments (dock or ramp) or otherwise alter the fringeland without written consent from the Lake Management Department. Appropriate action will be initiated to address such unauthorized violations. Upon the sale of fringeland to an individual, SCE&G generally retains title to a 75 foot buffer zone adjacent to the 360 foot contour.

Any unauthorized clearing of the trees or underbrush in the 75 foot buffer zone will result in the immediate cancellation of the individual's dock permit as well as possible legal action to require the revegetation of the affected area. Removal of merchantable timber will require reimbursement to South Carolina Electric & Gas Company subject to valuation of the Land Department.

X. WATER REMOVAL FROM THE LAKE

1. Application for a Permit

Applications for a commercial permit to remove water may be submitted to SCE&G. SCE&G will deny the application if it appears to conflict with the public interest. If not, it will be forwarded to FERC for approval if required. SCE&G will not endorse such applications. SCE&G will impose limits in granting permits for approved applications. The applicant will be required to compensate SCE&G for water withdrawn and to bear expenses of filing the application. Water removal for residential property must be for irrigation purposes only.

2. Application Procedure

A commercial application to withdraw water from the lake must include a complete description of the purpose for the removal and processes to be used, the volumes to be withdrawn and ultimately to be returned to the project waters, and copies of all required local, state, and federal permits and reports. A fee will be required.

XI. EFFLUENT DISCHARGES

1. Policy

SCE&G personnel will continue to notify appropriate governmental officials of any unauthorized effluent discharges which are discovered. Anyone found to have an unauthorized discharge source within the project boundary line will be required to remove it.

2. Installation of Sewage Pumping Stations at Marinas

Commercial marinas must have facilities to remove effluent wastes from boats pursuant to South Carolina Department of Health and Environmental Control regulations.

XII. GOVERNMENTAL CONSENTS

The South Carolina Department of Natural Resources has jurisdiction over navigation, wildlife, fisheries on Lake Murray. Applications for construction of new docks, boat ramps, excavations, filling and other encroachments may require evidence of consent from this agency.

The S. C. Department of Health and Environmental Control and the U. S. Environmental Protection Agency have jurisdiction over effluent discharges and activities affecting water quality in Lake Murray. Permits and certificates from these agencies may also be required.

Permits or consents from local governments with jurisdiction over zoning or other land use laws may be required.

XIII. GENERAL

Aquatic Weeds

The management of the Aquatic Weed Program on Lake Murray is a cooperative agreement between the South Carolina Department of Natural Resources and South Carolina Electric & Gas Company's Lake Management Department. Lake visitors are requested to help prevent the spread of aquatic weeds by clearing off boats and trailers before launching into the waters of Lake Murray.

It is against both State and Federal regulations for individuals to spray or treat aquatic growth in the waters of Lake Murray without the necessary permits. Report all unauthorized spraying or aquatic weed problems to South Carolina Electric & Gas Company's Lake Management Department.

Notice to Boaters (Overhead Powerlines Crossing Project Waters)

Overhead powerlines cross the waters of Lake Murray. Boaters should be aware of powerlines and approach with caution.

Deeds, permits or other instruments affecting Project 516 lands and waters will contain all standard covenants customarily imposed upon project property and such other covenants as in the sole discretion of SCE&G may be desirable or appropriate. The instrument may contain indemnity clauses and insurance provisions.

Inspection fees do not constitute a charge for admission to Project lands,.

SCE&G retains the right to vary the amount of inspection fees.

No vested right or rights enforceable by third parties are created by SCE&G's Policies or Procedures.

All statements in this booklet are qualified by reference to SCE&G's Policy Memorandum and Procedure Memorandum governing Lake Murray, both of which are subject to change at any time. Regulations, Orders and Directives of the Federal Energy Regulatory Commission will take precedence.

Maps of Lake Murray showing public and commercial landings, parks, shoal markings and other information are available free of charge from the South Carolina Electric & Gas Company.

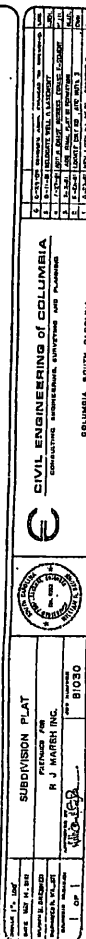
Inquiries concerning policies, procedures, applications or regulations as outlined in this booklet should be directed to South Carolina Electric & Gas Company (096), Lake Murray Management Department, Columbia, South Carolina 29218. Telephone (803) 748-3015.



South Carolina Electric & Gas Company
Lake Murray Management Department
Mail Code 096
Columbia, South Carolina 29218

Published	1-75
Revised	5-80
Revised	5-84
Revised	6-88
Revised	2-90
Revised	8-95

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DEFENDANT'S EXHIBIT E

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, SILVER POINTE COVE ASSOCIATES, INC., herein referred to as "Grantor" for and in consideration of the sum of SEVENTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 (\$77,500.00) Dollars to me paid by ROY R. DRASITES AND ELIZABETH P. DRASITES, hereinafter referred to as "Grantees" in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

ALL THAT CERTAIN PIECE, PARCEL OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove Subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc. dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This being the same property conveyed unto the Grantor herein by recorded in the Office of the RMC for Richland County in Deed Book D1262 at Page 377.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantees' Address: 611 Clearview Court
Columbia, SC 29212

Trax/Map No. 1411-02-04

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

DBK 1273 PAGE 242

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and

DEFENDANT'S EXHIBIT
16
P-28-16 RK

DBK 1273 PAGE 243

administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 11th day of August, in the year of our Lord one thousand nine hundred and ninety five.

Signed, Sealed and Delivered
in the Presence of:



Silver Pointe Cove Associates, Inc.

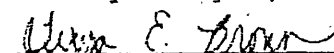



PRESIDENT
C. J. BEDER

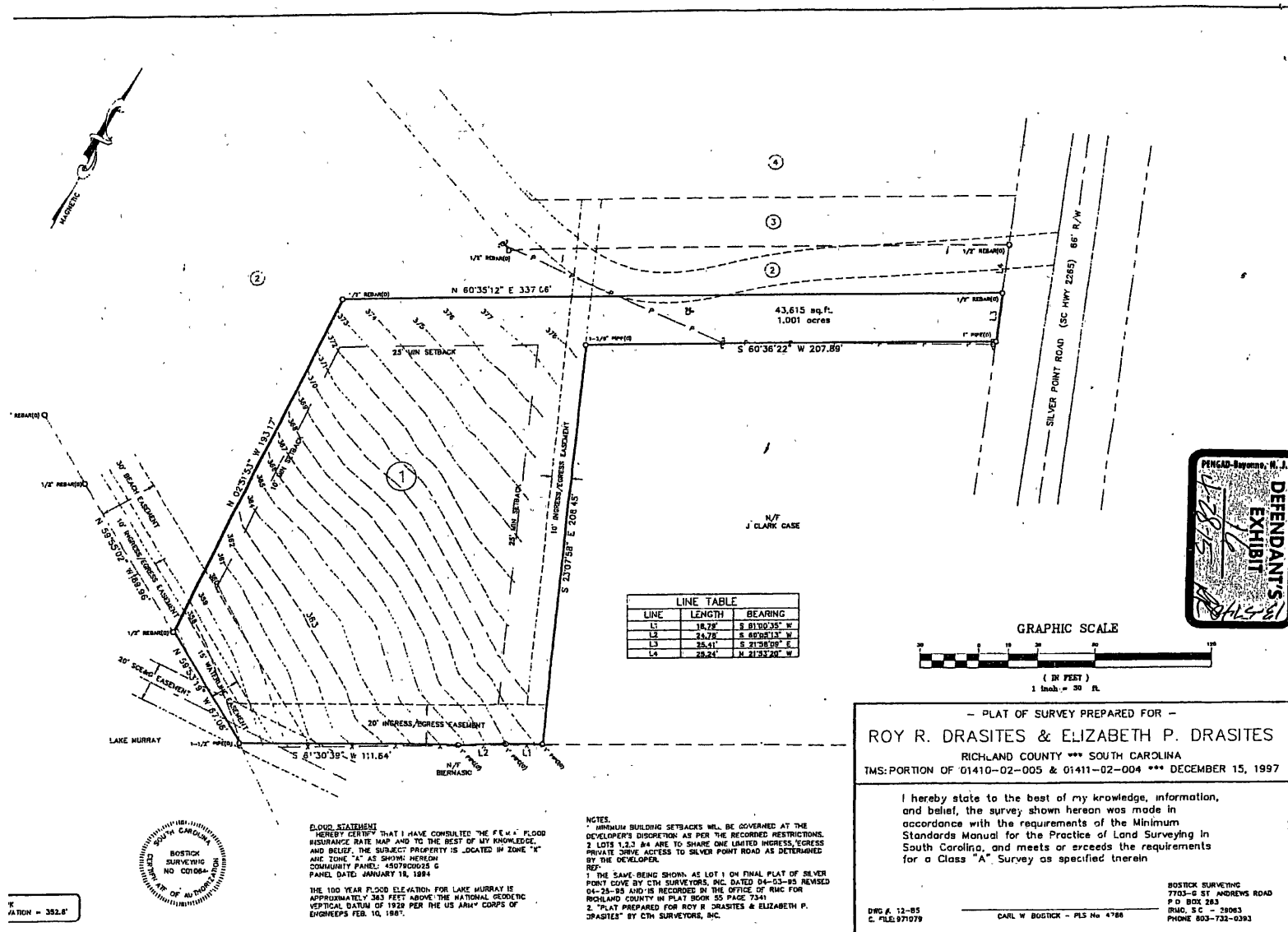
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

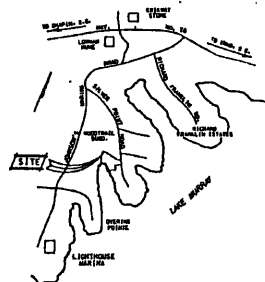
Personally appeared before me the undersigned and made oath that she saw the within-named Grantor sign, seal and affix his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
11th day of August, 1995

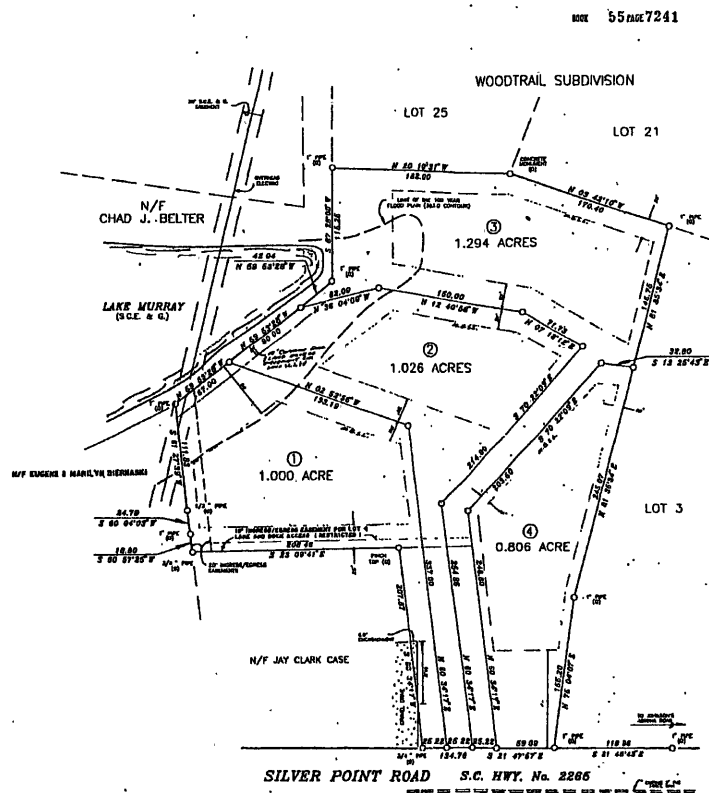

Notary Public for the State of South Carolina
My Commission Expires: February 3, 2003

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LOCATION MAP
1" = 1000'



NOTE: LOTS 1, 2, 3 & 4 ARE TO INCLUDE ONE LIMITED
BUSINESS/HAZARDOUS PRIVATE DRIVE ACCESS OFF
SILVER POINT ROAD AS DETERMINED BY DEVELOPER

THE OWNER / DEVELOPER
SILVER PINE, L.L.C. ASSOCIATES, INC.
800 HARRISON BOULEVARD
SUITE 103
COLUMBIA, S.C. 29212
CRAIG A. BELTER (803) 733-4419

THE SURVEYOR
C. T. H. SAWYERS, INC.
122 BULLOCK ROAD
BETHWOOD, S.C. 29216
PHILIP (803) 768-5187

APR 21 10 27 AM '55
41867 DUNVEGANCE

RECORDED PAID

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APPROVED FOR RECORDING
DATE 27 April 98
H. H. G. Subh. Co.

SCALE 1" = 40'	DATE 04-04-85	DRAWN J.A.H.	CHECKED C.H.A.	SHEET No. 1	FINAL PLAT SILVER POINT COVE LOCATED BY BRADSHAW COUNTRY AND LAKE ADJACENT FROM BRADSHAW, S.C.	C T H SURVEYORS, INC. 132 BALDWIN ROAD / SALTSPRING, S.C. 29156 PHONE NO. 786-1737	1. 104-4-85 2. 104-4-85 3. 104-4-85 4. 104-4-85 5. 104-4-85 6. 104-4-85 7. 104-4-85 8. 104-4-85 9. 104-4-85 10. 104-4-85 11. 104-4-85 12. 104-4-85 13. 104-4-85 14. 104-4-85 15. 104-4-85 16. 104-4-85 17. 104-4-85 18. 104-4-85 19. 104-4-85 20. 104-4-85 21. 104-4-85 22. 104-4-85 23. 104-4-85 24. 104-4-85 25. 104-4-85 26. 104-4-85 27. 104-4-85 28. 104-4-85 29. 104-4-85 30. 104-4-85 31. 104-4-85 32. 104-4-85 33. 104-4-85 34. 104-4-85 35. 104-4-85 36. 104-4-85 37. 104-4-85 38. 104-4-85 39. 104-4-85 40. 104-4-85 41. 104-4-85 42. 104-4-85 43. 104-4-85 44. 104-4-85 45. 104-4-85 46. 104-4-85 47. 104-4-85 48. 104-4-85 49. 104-4-85 50. 104-4-85 51. 104-4-85 52. 104-4-85 53. 104-4-85 54. 104-4-85 55. 104-4-85 56. 104-4-85 57. 104-4-85 58. 104-4-85 59. 104-4-85 60. 104-4-85 61. 104-4-85 62. 104-4-85 63. 104-4-85 64. 104-4-85 65. 104-4-85 66. 104-4-85 67. 104-4-85 68. 104-4-85 69. 104-4-85 70. 104-4-85 71. 104-4-85 72. 104-4-85 73. 104-4-85 74. 104-4-85 75. 104-4-85 76. 104-4-85 77. 104-4-85 78. 104-4-85 79. 104-4-85 80. 104-4-85 81. 104-4-85 82. 104-4-85 83. 104-4-85 84. 104-4-85 85. 104-4-85 86. 104-4-85 87. 104-4-85 88. 104-4-85 89. 104-4-85 90. 104-4-85 91. 104-4-85 92. 104-4-85 93. 104-4-85 94. 104-4-85 95. 104-4-85 96. 104-4-85 97. 104-4-85 98. 104-4-85 99. 104-4-85 100. 104-4-85 101. 104-4-85 102. 104-4-85 103. 104-4-85 104. 104-4-85 105. 104-4-85 106. 104-4-85 107. 104-4-85 108. 104-4-85 109. 104-4-85 110. 104-4-85 111. 104-4-85 112. 104-4-85 113. 104-4-85 114. 104-4-85 115. 104-4-85 116. 104-4-85 117. 104-4-85 118. 104-4-85 119. 104-4-85 120. 104-4-85 121. 104-4-85 122. 104-4-85 123. 104-4-85 124. 104-4-85 125. 104-4-85 126. 104-4-85 127. 104-4-85 128. 104-4-85 129. 104-4-85 130. 104-4-85 131. 104-4-85 132. 104-4-85 133. 104-4-85 134. 104-4-85 135. 104-4-85 136. 104-4-85 137. 104-4-85 138. 104-4-85 139. 104-4-85 140. 104-4-85 141. 104-4-85 142. 104-4-85 143. 104-4-85 144. 104-4-85 145. 104-4-85 146. 104-4-85 147. 104-4-85 148. 104-4-85 149. 104-4-85 150. 104-4-85 151. 104-4-85 152. 104-4-85 153. 104-4-85 154. 104-4-85 155. 104-4-85 156. 104-4-85 157. 104-4-85 158. 104-4-85 159. 104-4-85 160. 104-4-85 161. 104-4-85 162. 104-4-85 163. 104-4-85 164. 104-4-85 165. 104-4-85 166. 104-4-85 167. 104-4-85 168. 104-4-85 169. 104-4-85 170. 104-4-85 171. 104-4-85 172. 104-4-85 173. 104-4-85 174. 104-4-85 175. 104-4-85 176. 104-4-85 177. 104-4-85 178. 104-4-85 179. 104-4-85 180. 104-4-85 181. 104-4-85 182. 104-4-85 183. 104-4-85 184. 104-4-85 185. 104-4-85 186. 104-4-85 187. 104-4-85 188. 104-4-85 189. 104-4-85 190. 104-4-85 191. 104-4-85 192. 104-4-85 193. 104-4-85 194. 104-4-85 195. 104-4-85 196. 104-4-85 197. 104-4-85 198. 104-4-85 199. 104-4-85 200. 104-4-85 201. 104-4-85 202. 104-4-85 203. 104-4-85 204. 104-4-85 205. 104-4-85 206. 104-4-85 207. 104-4-85 208. 104-4-85 209. 104-4-85 210. 104-4-85 211. 104-4-85 212. 104-4-85 213. 104-4-85 214. 104-4-85 215. 104-4-85 216. 104-4-85 217. 104-4-85 218. 104-4-85 219. 104-4-85 220. 104-4-85 221. 104-4-85 222. 104-4-85 223. 104-4-85 224. 104-4-85 225. 104-4-85 226. 104-4-85 227. 104-4-85 228. 104-4-85 229. 104-4-85 230. 104-4-85 231. 104-4-85 232. 104-4-85 233. 104-4-85 234. 104-4-85 235. 104-4-85 236. 104-4-85 237. 104-4-85 238. 104-4-85 239. 104-4-85 240. 104-4-85 241. 104-4-85 242. 104-4-85 243. 104-4-85 244. 104-4-85 245. 104-4-85 246. 104-4-85 247. 104-4-85 248. 104-4-85 249. 104-4-85 250. 104-4-85 251. 104-4-85 252. 104-4-85 253. 104-4-85 254. 104-4-85 255. 104-4-85 256. 104-4-85 257. 104-4-85 258. 104-4-85 259. 104-4-85 260. 104-4-85 261. 104-4-85 262. 104-4-85 263. 104-4-85 264. 104-4-85 265. 104-4-85

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Defendant's EXHIBIT F:

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Richland County Master-in-Equity

Trial Court Case No.: 2013-CP-40-5740
Appellate Case No.: 2016-000046

Hamilton Duncan, Individually and Hamilton Duncan, as Personal
Representative of the Estate of Christine A. Duncan..... Respondent

v.

Roy Drasites and Elizabeth Drasites..... Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Appellants complies with Rule 210(c) and 210(g) of the
South Carolina Appellate Court Rules.

DAVIS | FRAWLEY, LLC



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
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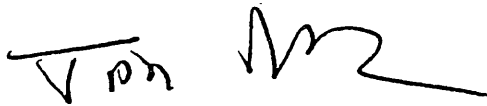
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SC Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

Roy Drasites and Elizabeth Drasites Appellants.

FINAL BRIEF OF APPELLANTS

By: 

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THE STATE OF SOUTH CAROLINA
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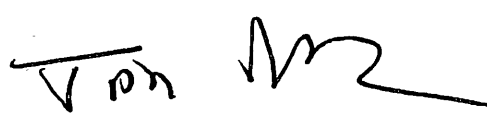
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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE MASTER IN EQUITY ERR IN NOT FINDING THE PURPOSE OF THE EASEMENT WAS TO GAIN ACCESS TO A DIRT ROAD SHOWN ON A PLAT OF WOODTRAIL SUBDIVISION WHICH ROAD ALLEGEDLY CONNECTED TO JOHNSON MARINA ROAD?**
- 2. DID THE MASTER IN EQUITY ERR IN NOT FINDING THE EASEMENT DOES NOT RUN THE ENTIRE LENGTH OF THE APPELLANTS' SOUTHWEST PROPERTY LINE, LEAVING SOME PORTION OF THE APPELLANTS' PROPERTY FREE FROM THE BURDEN OF THE EASEMENT?**
- 3. DID THE MASTER IN EQUITY ERR IN FINDING THE EASEMENT RIGHT OWNED BY THE RESPONDENT GRANTED HIM THE RIGHT OF INGRESS, EGRESS AND ACCESS TO LAKE MURRAY, INCLUDING BY VEHICLE TOWING LIGHT WATER CRAFT?**

STATEMENT OF CASE

Plaintiff, Hamilton Duncan, filed his Summons and Complaint on September 23, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan was added as a Plaintiff in this action. Also by Consent Order dated June 19, 2014, Plaintiff was granted leave to amend his Complaint. In his Amended Complaint, Plaintiff seeks an injunction enjoining the Defendants and their agents from obstructing or otherwise interfering with the Plaintiff's right-of-way easement and from unreasonably discouraging prospective buyers; and to dismantle and remove rip rap, water pipe(s) and other obstructions blocking Plaintiffs' right-of-way easement. Plaintiff also seeks an Order declaring (a) that the easement extends to the edge of Defendant's Property; (B) that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a water craft and enable Plaintiff to launch the water craft from the easement. In their Answer, Defendants admit the existence and origin of the Easement. Further answering the Defendants' allege that the termination point of the Easement is the location point described in said easement as it was on execution date of the easement grant (July 28, 1976) and that with an express easement, Plaintiff cannot unilaterally expand or change the specific provisions in the easement.

A merits hearing was held on this matter on April 28, 2015. Appearing at the merits hearing were the attorneys of record, Defendant Roy Drasites, Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program representative, Carl W. Bostick, Dennis G. Johns, and Larry W. Smith, all three are South Carolina registered land surveyors.

On July 29, 2015, The Honorable Joseph M. Strickland, Richland County Master-in-Equity entered his Order indicating the following:

- a. The easement burdens the entire length of the Drasites Property;
- b. The purpose of the Easement is for ingress, egress, and access to Lake Murray;
- c. Included within the Plaintiff, and his successors in title's rights, to use the Easement is the right to vehicular use of the Easement, including by vehicle towing and hauling light watercraft;
- d. Plaintiff and his successors in title are entitled to maintain the Easement in such a way that will allow use of the Easement, including the vehicle towing and launching light watercraft; to the extent Plaintiff, or his successors in title, perform such maintenance, it shall be at their expense; and
- e. Defendants are hereby enjoined from discouraging any prospective purchasers of the Duncan Property.

On August 10, 2015, Defendants served their Motion to Alter or Amend the Court's Order dated July 20, 2015. The Honorable Joseph M. Strickland filed his Order denying Defendants' Motion to Amend on December 4, 2015. Order read as follows, "This matter before the Court is a Motion to Alter or Amend Judgment submitted by James Randall Davis, Esquire attorney for the Defendants. The motion is denied."

On January 8, 2016, Defendants filed and served their Notice of Appeal with the South Carolina Court of Appeals.

**STATEMENT OF FACTS
FACTS AS TO
ARGUMENT I**

Appellants and Respondent own property in the same subdivision in Richland County. Appellants' property abuts Respondent's property on the Southeastern side. Respondent has a twenty (20') foot wide easement that parallels the Southeastern boundary of Appellants' property.

Respondent and Appellants' chain-of-title are shown.

RESPONDENT'S CHAIN OF TITLE

By Deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 147, Woodberry Utilities, Inc. conveyed to Jay Clark Case (see *Plaintiff's Trial Exhibit 15*) (R. p. 194)) the following one acre tract:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a one acre tract on a plat prepared for R. J. Marsh, Inc. by Douglas E. Platt, Sr. dated March 25, 1976, and to be recorded: Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon it measures 208' feet; On the Southeast by property now or formerly of SCE&G Co. whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; be all measurements a little more or less.

The origin of the easement at dispute in this case is deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 150 (the "Easement Deed"), wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case (see *Plaintiff's Trial Exhibit 1*) (R. p. 166)) a non-exclusive right of ingress and egress over a twenty (20') foot strip of land. The Easement Grant reads as follows:

"A non-exclusive right of ingress and egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray."

Jay Clark Case then deeded to A. Charles Craft, III and Manita B. Craft (*see Plaintiff's Trial Exhibit 14*)(*R. p. 191*)) the property by deed dated December 15, 1995 and recorded December 19, 1995 in Deed Book 1293 at Page 668 wherein he also conveyed the following Easement Grant:

"That certain non-exclusive easement for ingress and egress over a 20 foot strip from the above described property to the 360 contour of Lake Murray, said easement is described in that certain deed to Jay Clark Case from Woodberry Utilities, Inc. recorded in the Office of the RMC for Richland County in Deed Book D393 page 130 and shown on the Plat prepared for Jay Clark Case by Site Consultants and recorded in the Office of the RMC for Richland County in Plat Book 52 page 1316.

The Site Consultants plat referenced in the deed from Jay Clark Case to Mr. and Mrs. Craft is dated April 25, 1988. *See Plaintiff's Trial Exhibit 18 (R. p. 199)*.

By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Plaintiff and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, South Carolina 29036, more particularly described as follows (the "Duncan Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further

lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Christine A. Duncan passed away as a citizen and resident of the State of South Carolina, County of Richland. Plaintiff Hamilton Duncan has been appointed Personal Representative of the Estate of Christine A. Duncan.

By deed dated March 17, 2014, recorded in the Office of the Register of Deeds for Richland County on April 1, 2014, in Book 1936 at Page 1081, and corrective deed dated September 24, 2014, recorded in the Office of the Register of Deeds for Richland County on October 2, 2014, in Book 11413 at Page 18, Respondent Hamilton Duncan, individually purported to conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

APPELLANTS' CHAIN OF TITLE

By deed dated April 11, 1985, recorded April 16, 1985 in the Office of the Register of Deeds for Richland County in Deed Book 737 at Page 410, Woodberry Utilities, Inc. conveyed to R.J. Marsh 35.7 acres (*see Plaintiff's Trial Exhibit 5*)(*R. p. 174*)) as follows:

All that certain piece, parcel or tract of land, situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing 35.7 acres, more or less, and being more fully shown and delineated on a plat prepared for Betty A. Thompson by McMillan Engineering Company, dated March 29, 1960 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 15 at Page 234 and having the following boundaries and measurements as shown on said plat; on the north by property of Lowman Home, measuring thereon six hundred

eighty-eight (688') feet; on the east by property of Lowman Home, measuring thereon one thousand six hundred thirty-seven (1,637') feet; on the south by property of Wertz, measuring thereon two hundred fifty-two and three tenths (252.3') feet; on the southwest by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described). Measuring thereon three hundred ninety-eight and five-tenths (398.5') feet; on the south by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred fourteen and nine-tenths (114.9') feet; on the east by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described) measuring thereon one hundred eighty-two and six-tenths (182.6') feet; on the south by a County Road (Dirt), measuring thereon eight hundred eighty-three (883') feet; and on the west by County Road (Paved), measuring thereon along an irregular line one thousand six hundred fifty-nine and five-tenths (1,659.6') feet; be all measurements a little more or less.

ALSO: All of those certain two pieces, parcels or tracts of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing in the aggregate 1.23 acres, more or less, and being more fully shown on Partial Plat of lands of Mrs. J.W. Kleckley and W.F. McCarthy, dated October 20, 1959, revised July 27, 1960, as Parcel B containing 0.98 acre, more or less, and Parcel C containing 0.28 acre, more or less, the said plat being attached to and recorded with the deed from South Carolina Electric & gas Company hereinbelow referred to as Exhibit "A" and being bounded on North by property hereinabove described, on the East by property now or formerly of Wertz, on the South by property of South Carolina Electric & Gas Company, and on the West by property hereinabove described.

LESS: The right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray. (This property being previously conveyed to Jay Clark Case in Deed Book D393 at Page 150).

LESS: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina being shown and designated as a one (1) acre tract on a plat prepared for R. J. Marsh, Inc., by Douglas E. Platt, Sr., dated March 25, 1976, and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon measures 208' feet; On the Southeast by property now or formerly of South Carolina Electric & Gas Company whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; be all measurements a little more or less.

LESS: All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being rear the Town of White Rock, County of Richland, State of South Carolina, being shown and delineated as a 1.00 acre tract on a plat prepared for Charles K. and Margaret C. Miles by Civil Engineering of Columbia, dated October 17, 1977 and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the North by lands now or formerly of Richard Marsh whereon it measures 218.40 feet; On the East by lands now or formerly of Richard marsh whereon it measures 175.58 feet; On the South by unpaved road whereon it measures 243.72 feet; On the West by State Road S-40-610 whereon it measures 239.26 feet; be all measurements a little more or less.

By deed dated June 8, 1995, recorded June 15, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1262 at Page 377, R. J. Marsh conveyed to Silver Pointe Cove Associates, Inc. (*see Plaintiff's Trial Exhibit 4*)(*R. p. 171*)) the following property:

All those certain pieces, parcel, lots or tracts of land, with the improvements thereon, if any, situate, lying and being in the County of Richland, State of South Carolina, and being more specifically shown and designated as Lots 1, 2, 3, and 4, inclusive, on a plat of Silver Pointe Cove prepared for Silver Pointe Cove Associates, Inc., by C T H Surveyors, Inc., dated April 3, 1995 and recorded in the Office of the RMC for the aforesaid County in Plat Book

55 at Page 7241. *See Defendant's Trial Exhibit 3 (R. p. 239).*

By deed dated August 11, 1995, recorded August 14, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1273 at Page 242, Silver Pointe Cove Associates, Inc. conveyed a fee simple interest in 1310 Silver Point Road, Chapin, South Carolina to Roy R. Drasites and Elizabeth P. Drasites, Defendants herein, (*See Defendants' Trial Exhibit 15 (R. p. 236)*) more particularly described as follows (the "Drasites Property"):

ALL THAT CERTAIN PIECE, PARCEL, OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April, 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

The Respondent's easement is shown on the Southeastern border of Appellants' property, Lot 1, on *Plaintiffs' Trial Exhibit 16 (R. p. 197)*.

The earliest plat describing the easement in issue is the plat of Wood Trail Subdivision (earlier name of Respondent and Appellants' subdivision) prepared by Civil Engineering of Columbia dated May 14, 1981 (some 5 years after the easement execution on July 28, 1976) and said plat does not show the easement in issue terminating at the waters of Lake Murray but terminates at the edge of a road that ran along the boundary of the Appellants' property and

shows the waters of Lake Murray beyond the easement termination point as well as beyond the road. The Respondent's easement is shown on the Southeastern border of said plat. See *Defendant's Trial Exhibit 13 (R. p. 235)*.

Appellants and Respondent had a common grantor for their properties; that being Woodberry Utilities, Inc. Woodberry Utilities, Inc. was conveyed the common source property (35.7 acres) plus fringe lands* by deed from Betty A. Thompson (*See Plaintiff's Trial Exhibit 6 (R. p. 178)*) dated August 14, 1973 and recorded August 14, 1973 in Deed Book 289 at Page 790 in the Office of Register of Deeds for Richland County.

A portion of Appellants' property is fringe land which is a portion of Parcel B in the deed from South Carolina Electric & Gas Company to Betty A. Thompson by deed dated October 30, 1960 and recorded May 1, 1963 in Deed Book 354 at Page 554 in the Register of Deeds Office for Richland County. *See Plaintiff's Trial Exhibits 7(R. p.181) and 9 (R. p. 181)*. Said deed reserved an easement for a road running generally along the Southeastern boundary of the aforesaid described tracts.

The 35.7 acre tract owned by Betty A. Thompson is shown on a plat dated March 29, 1960 prepared McMillian Engineering Company and filed of recorded in Richland County on April 15, 1960. *See Plaintiff's Trial Exhibit 21(R. p. 202)*. The road that is referenced on the Woodtrail Plat is shown on *Plaintiff's Trial Exhibit 21 (R. p. 202)* on the Southeastern side of the 35.7 acre parcel and is the road that was reserved to SCE&G in *Plaintiff's Trial Exhibit 7 (R. p. 181) and 9(R. p. 181)*.

A portion of Appellants' property is fringe land and it is a portion of Parcel B, 0.98 acre, and is *Plaintiff's Trial Exhibit 10; R. p. 185*.

FACTS AS TO ARGUMENT II

Carl W. Bostick prepared a plat for the Appellants dated December 15, 1997 (*see Defendants' Exhibit 16 (R. p. 238)*) showing the location of the 360' contour on the Defendants' property.

The Appellants and a neighbor (Bullocks), in 1998, obtained a Lake Murray permit for excavation of the cove of Lake Murray in front of their lots and the establishment of a dock. The application was approved December 4, 1998. The approval allowed for the establishment by the Defendants and Bullock of a retaining wall on their property at the 360' contour of Lake Murray. Said wall was established by the Appellants and Bullock. The permit allows for excavation only below the 360' contour of Lake Murray. *See Transcript pages 86-88 (R. pp. 127-129).*

Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program, testified that SCE&G regulates the permitting, upgrading and maintaining structures and facilities below the 360' contour of Lake Murray pursuant to directives of the Federal Energy Regulatory Commission and SCE&G had implemented a written management program policy in January 1975, prior in time to the creation of the easement in issue. *See Transcript p. 83 (R. p. 124, Lines 8-25).*

Mr. Boozer testified that his opinion was that the 360' contour on the Drasites property and the Respondent's easement crossing the Drasites property was located at the point shown on the Carl W. Bostick survey dated February 3, 2014, which location is where the retaining wall, allowed by the SCE&G excavation permit, is located. *See Transcript p. 86 (R. p. 127, Lines 5-25) and Defendants' Trial Exhibit 2 (R. p. 211).*

Surveyor Bostick has prepared surveys for the Appellants since 1995, including the December 1997 360' contour plat and indicated that the 360' contour location on the Drasites

property is where the retaining wall is located and is shown on the Bostick plat dated February 3, 2014 (*See Defendants' Trial Exhibit 16*) (R. p. 238).

FACTS AS TO ARGUMENT III

Larry Smith, a registered land surveyor, testified as an expert witness for the Respondent. Mr. Smith worked with South Carolina Electric and Gas Company and did all the fringe land surveying on Lake Murray for the power company from 1962-1969, and as a private surveyor is still doing fringe land surveys for the power company. Transcript p. 58 (R. p. 99, Lines 15-21). Mr. Smith testified that: (1) the creator of Respondent's easement could only convey an easement to the 360 contour because it did not own the land below the 360 contour; (2) the grantor's property terminated at the 360 contour, Transcript p. 63 (R. p. 104, Lines 7-9); (3) the property below the 360 contour came under the Power Company's jurisdiction, Transcript p. 65 (R. 106, Lines 5-24); and (4) any use of the Power Company's property below the 360 contour had to be with the Power Company's approval, Transcript p. 66 (R. p. 107, Lines 1-3).

Tommy Boozer, Shoreline Management Manager of South Carolina Electric and Gas Company, has been such for 25 years. Transcript p. 82 (R. p. 123, Lines 21-23). Mr. Boozer testified that: (1) he dealt with developments and different activities around the shoreline, Transcript p. 83 (R. p. 124, Lines 1-3); (2) South Carolina Electric and Gas Company had jurisdiction of property owned by it below the 360 contour, Transcript p. 83 R. p. 124, Lines 8-9); (3) this property came under SCE&G's written Shoreline Management Plan. *Defendant's Trial Exhibit 3* (R. p. 213), Transcript p. 83 (R. p. 124, Lines 22-25); (4) this plan had been in existence since 1975; (5) Respondent, by letter, had requested permission from SCE&G to do certain work below the 360 contour for grading and removing some soil. Transcript p. 85 (R. p. 126; (6) there was no permit issued by SCE&G for that request, Transcript p. 85 (R. p. 126); and

(7) a boat dock nor a boat ramp would be issued to the Respondent, Transcript p. 85 (R. p. 126). Page 16 of the Lakes Murray Shoreline Management Plan indicates that a residential land owner who owns property above the SCE&G fringe land will have the right of access by foot to and from the lake. *Defendant's Trial Exhibit 3* (R. p. 213).

STANDARD OF REVIEW

"[T]he determination of the scope of the easement is a question in equity." *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006); see also *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998) ("[T]he interpretation of a deed is an equitable matter."). On appeal in an action in equity tried by the Master, "the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. appl 2004). Thus, this court may reserve a factual finding by the Master in such cases when the appellant satisfies us the finding is against the greater weight of the evidence. *Id.*

The Appellate Court reviews questions of law de novo. *Fields v. J. Hayes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). "[A] reviewing court is free to decide questions of law with no particular deference to the [Master]." *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 569, 595 S.E.2d 846, 848-49 (Ct. App, 2004).

LAW ANALYSIS

An "easement" is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578.

As a general rule, to constitute a grant of an easement, any words clearly showing the intention to grant an easement are sufficient. 25 Am.Jur.2d. *Easement and Licenses* §15, at 512 (2004). "Whether a grant in a written instrument creates an easement and the type of easement

created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention.” *Smith v. Comm’rs of Pub. Works of City of Charleston*, 312 S.C. 460, 441 S.E.2d 331, 335 (Ct. Appl 1994).

Circumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972).

“If the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction which the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect.” 25 Am.Jur.2d *Easements* §18, at 516 (2004). Cited as *Ten Woodruff Oaks, LLC v. Point Development, LLC*, 385 S.C. 174, 638 S.E.2d 510.

If there is any ambiguity in an easement, the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the easement. The reason for the rule of strict construction against the party preparing the easement is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the easement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423.

Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

A plat which is not referenced or incorporated into an easement description is not made a part of the legal dimensions described in the plat. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

A plat is admissible although not referenced to in any deed in the opposing party's chain of title and the opposing party was unaware of the existence of the plat prior to trial. *Culbertson v. Culbertson*, 273 S.C. 103, 254 S.E.2d 558 (1979).

ARGUMENT I

The easement grant owned by the Respondent is as follows:

All that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

The Master has found that this language allows the Respondent to utilize the twenty (20') foot strip "for the right of ingress, egress and access to Lake Murray, including by vehicle towing light watercraft." *Order* p. 13 (R. p. 24) Initially, looking at the expressed terms of the easement, the easement language does not speak with specificity as to the kind or manner of uses. (R. p. 166). The only expresses access rights from the Respondent's property to the 360° degree contour to Lake Murray. It does not state that the specific use is for access to Lake Murray. The easement makes no reference to a plat that could show further intent as to the purpose of the easement. It is also clear, from the testimony by Respondent's expert witness, Larry Smith, that the grantor on the easement had no further rights in the property beyond its termination point which was the 360° degree contour of Lake Murray. *Transcript p. 104* (R. p. 104, Lines 7-9) This meant that his easement granting rights terminated at the 360° degree contour. Obviously,

the grantor of the easement could only grant easement rights on the property that it owned. The Respondent must base his easement right on what was granted to him by this particular language. The history of the use for the easement does not indicate that it was used for vehicular traffic towing light watercraft. Respondent was not present for the hearing and did not testify on his use. Respondent has presented no evidence on his personal interpretation of the easement language. The other witnesses were three registered land surveyors and a representative from South Carolina Electric & Gas Company whom did not testify as to any specific use of the easement.

Appellants argue that based on the above the easement language is ambiguous in determining the intent of easement. Looking beyond the actual "four corners" of the easement language, the only other recorded document in the Respondent's chain of title is a plat prepared by Site Consultants in 1988; some 12 years after the actual grant of easement in 1976 (*Plaintiff's Trial Exhibit 18*) (R. p. 199). This plat is not part of the original easement grant but is just referenced in subsequent deeds. This plat could not grant any more rights than what was provided by the language in the original grant.

The earliest recorded evidence, outside the terms of the easement grant, is a plat prepared in 1981 which is referred to in the facts as the "Woodtrail Plat" shows the Respondent's property, Appellants' property and the easement in question. (*Defendant's Trial Exhibit 13*) (R. p. 235). At the termination point of the easement, there is a road. Mr. Marsh executed the deed from Woodberry Utilities, Inc. to Respondent's predecessor-in-title as to the easement. (*Plaintiff's Trial Exhibit 15*) (R. p. 194). The Woodtrail Plat prepared for R.J. Marsh, Inc. was being prepared for someone who had knowledge of what abutted the Woodtrail plat (i.e. the road which is located at the end of the Respondent's easement). Appellants argue that this plat best

expresses the intent of the Respondent's easement in that it connected to a road that traverses the Woodtrail Subdivision and tied into a public road.

Based on Appellants' chain-of-title, which originated out of the 35.7 acre tract conveyed to Woodberry Utilities, Inc. by Betty A. Thompson, the same road on the Woodtrail Plat appears on the 1960 plat showing the 35.7 acres. (*Plaintiff's Trial Exhibit 6*) (R. p. 178). The fringe lands conveyed by South Carolina Electric & Gas Company to Betty A. Thompson (fringe land in out chain-of-title) reserved to South Carolina Electric & Gas Company the road which is shown on the 1960 plat prepared for Betty A. Thompson showing the 37.5 acres. (*Plaintiff's Trial Exhibit 9*) (R. p. 181) Appellants argue that this road is the same as that which is appears on the 1960 Woodtrail Plat.

The Master found that the Woodtrail subdivision never developed as shown on the Woodtrail Plat. The three important properties in this case are the Respondent's property, Appellant's property and easement of the Respondent and all are shown on the Woodtrail Plat. The road in question, which was at the termination point of Respondent's easement, had been in existence since 1960. Looking at the surrounding circumstances as to the creation of this easement, either at its origin or within five (5) years of its origin the preponderance of evidence does not show that the purpose of the easement was for access to Lake Murray.

Appellants further contend if this Court finds the easement language is ambiguous, the language should be construed against the Respondent to burden the Appellants' property the least amount possible. The theory being that since the language does not specify launching watercraft by vehicular traffic and there is no evidence it is being use for that purpose, that use should be denied.

ARGUMENT II

Appellants and their neighbor, Bullock, obtained approval from South Carolina Electric & Gas Company by permit in 1998 and 1999 to excavate the property of South Carolina Electric & Gas Company abutting their property lying below the 360° degree contour line. (*Defendant's Trial Exhibit 2*) (R. p. 211). The Lake Murray Shoreline Management Plan, as well as the testimony of Tommy Boozer, representative of South Carolina Electric & Gas Company, confirmed that the excavation was only below the 360° degree contour. (*Transcript p. 88*)(R. p. 129, Lines 13-15). Appellants and neighbor Bullock establish a retaining wall at the time of the completion of excavation and said retaining wall was located at the 360° degree contour. (*Transcript p. 86,*) (R. p. 127, Lines 13-16). The retaining wall has not been relocated since its construction. Only one surveyor, Carl Bostick, has done some surveying work on the Appellants' property since Appellants' purchase in 1995. Prior to the permitted excavation, surveyor Bostick had prepared an elevation survey showing the 360° degree contour as it abutted neighbor Bullock and Appellants' property. (*Defendant's Trial Exhibit 16*) (R. p. 238). Surveyor Bostick prepared an additional survey in 2014 for the Appellants and established the 360° degree contour, once again, on the Appellants' property which the 360° degree contour noted on surveyor Bostick's plat was located where the retaining wall was constructed. (*Plaintiff's Trial Exhibit 20*) (R. p. 201). Tommy Boozer of South Carolina Electric & Gas Company indicated the retaining wall, as shown on surveyor Bostick's 2014 plat, was the 360° degree contour on the Appellants' property. (*Transcript p. 86*) (R. p. 127, Lines 5-25). Larry Smith, one of the expert witnesses for the Respondent, did not do any survey work on the Appellants' property or the Respondent's property. Surveyor Dennis Johns only commenced his work on the Appellants' property in 2012. The location of the 360° degree contour as denoted in surveyor Bostick's 2014

plat, shows the 360° degree contour off the Lake Murray shore line of the Appellants' property, leaving an area on the Appellants' property which would lie between Respondent's granted easement (360° degree contour) and the shoreline of Lake Murray. (*Plaintiff's Trial Exhibit 20*) (*R. p. 201*).

ARGUMENT III

In the Master's Order dated July 29, 2015, he found as follows:

"I further find and conclude that the intention of the parties to the Easement Deed was that the owners of the Duncan Property be granted the right of ingress, egress, and access to Lake Murray, including by vehicle towing light watercraft. I find that the use of the Easement, including use by vehicle towing light watercraft. I find that the use of the Easement, including use by vehicle to launch watercraft, is incident or necessary to the proper use and enjoyment of the Easement. I find that this is not an additional burden on the land of the servient estate, the Drasites Property, and that such use by vehicle is as little burdensome to the use contemplated by the grant of the easement."

The language of the Master's Order indicates Respondent had a legal right for access to Lake Murray for the purposes stated in the Order (i.e. launching a light watercraft into Lake Murray). The testimony of Tommy Boozer, Manager of South Carolina Electric & Gas Company's Lake Murray Shoreline Management Program, testified that the property owned by South Carolina Electric & Gas Company below the 360° degree contour came under the jurisdiction of SCE&G. Larry Smith, former surveyor employee of South Carolina Electric & Gas Company who had dealt with fringe land issues during his professional career, indicated the same. The Lake Murray Shoreline Management Plan makes South Carolina Electric & Gas Company responsible for enforcing Federal Energy Regulatory Commission Directives regarding unauthorized uses of Lake Murray waters and land below the 360° degree contour elevation. The easement rights that the Respondent would have would end at the 360° degree

contour because that is the termination point of the easement by the language description in the easement. The Respondent would be subject to approval from South Carolina Electric & Gas Company as to its access to Lake Murray and any use of the waters of Lake Murray. Respondent was notified by SCE&G that there was no permit for soil excavation of the kind requested by the Respondent. (*Defendant's Trial Exhibit 1*) (R. p. 210) This was the shoreline soil where the easement is located. Mr. Boozer had further testified he had received no dock permit or ramp permit. The Management Plan further indicates that an abutting property owner has foot traffic rights on fringe land*. No determination in this hearing decided foot rights were extended to an easement owner. Surveyor Smith described the fringe land as Parcels A, B and C that Mrs. Thompson received which is shown on the fringe land plat introduced into evidence.

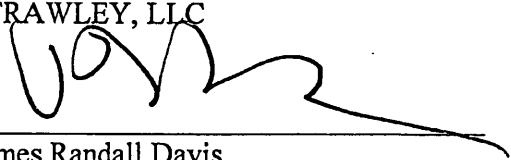
CONCLUSION

Appellants contend that that the preponderance of the evidence does not support the conclusions by the Master that the use of the easement includes access to Lake Murray by vehicular towing and launching of watercraft. Preponderance of the evidence supports that the purpose of the easement was to gain access to a dirt road shown on a plat of Woodtrail Subdivision which road connected to Johnson Marina Road and the easement does not run the entire length of the Appellants' southwest property line, leaving some portion of Appellants' property free from the burden of the easement, which would prevent Respondent from reaching the lake without trespassing on the Appellants' property. Appellants contend that any access to Lake Murray by the Respondent for vehicle towing and launching of watercraft would be determined by South Carolina Electric & Gas Company based on its mandate from the Federal

*Fringe land is defined as that area owned by South Carolina Electric & Gas Company between the project boundary line and 360° degree contour on Lake Murray. A portion of the Appellants' property if fringe land

Energy Regulatory Commission if the Respondent wishes to access the property owned by South Carolina Electric & Gas Company which is below the 360° degree contour along the Appellants' property.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

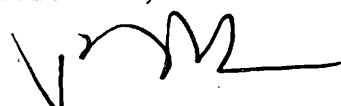
v.

Roy Drasites and Elizabeth Drasites Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief of Appellants complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Richland County Master-in-Equity

Trial Court Case No.: 2013-CP-40-5740
Appellate Case No.: 2016-000046

RECEIVED

AUG 31 2016

SC Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as Personal
Representative of the Estate of Christine A. Duncan.....

Respondent

v.

Roy Drasites and Elizabeth Drasites.....

Appellants.

PROOF OF SERVICE

I, Nicole T. Price, paralegal with the law firm of DAVIS | FRAWLEY, LLC, do hereby
certify that I have served the **FINAL BRIEF OF APPELLANTS** on Hamilton Duncan,
Individually and Hamilton Duncan, as Personal Representative of the Estate of Christine A.
Duncan, by depositing a copy of it in the United States Mail, postage prepaid on August 31,
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

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RECEIVED

AUG 10 2016

SC Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as Personal
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v.

Roy Drasites and Elizabeth Drasites Appellants.

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In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No. 2013-CP-40-05740
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STATEMENT OF ISSUES ON APPEAL

1. **DID THE MASTER-IN-EQUITY ERR IN RULING THAT THE PURPOSE OF THE EASEMENT WAS TO ACCESS LAKE MURRAY AND THEREFORE BURDENS THE APPELLANTS' ENTIRE SOUTHERN PROPERTY LINE WHERE THE EASEMENT EXPRESSLY MENTIONS A TERMINUS ON A CONTOUR OF LAKE MURRAY?**
2. **DID THE MASTER-IN-EQUITY ERR IN RULING THAT RESPONDENT MAY UTILIZE THE EASEMENT FOR VEHICULAR USE TOWING LIGHT WATERCRAFT?**

STATEMENT OF THE CASE

The Appellants have appealed the Order of The Honorable Joseph M. Strickland, Master-In-Equity for Richland County, dated July 20, 2015, filed with the Clerk of Court for Richland County on July 29, 2015 (the "Order"), and the Order Denying Motion to Alter or Amend Judgment dated December 1, 2015, filed with the Clerk of Court for Richland County on December 4, 2015. Judge Strickland ruled "the evidence in the record, the testimony, and the language of the Easement Deed itself, all lead me to find and conclude that the purpose of the Easement is and was to access Lake Murray and burdens the entire length of the Drasites Property from the Duncan Property to the original boundary of the Appellants' Property with Lake Murray. (Order, p. 9) (R., p. 21). Relevant to this Appeal, Judge Strickland ruled that (i) the Easement burdens the entire length of the Appellants' Property; (ii) the purpose of the Easement is for ingress, egress, and access to Lake Murray; and (ii) included within the Respondent's rights to use the Easement is the right to utilize the easement for vehicular use towing light watercraft. (Order, p. 12)(R., p. 24).

This matter was commenced by the filing of the Summons and Complaint on September 23, 2013. Appellants filed their *Pro Se* Appearance and Answer on October 14, 2013. The case was referred to The Honorable Joseph M. Strickland, as Master-in-Equity for Richland County,

by Order of Reference dated December 9, 2013, filed on December 12, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan, was added as a Plaintiff in the case. Also by Consent Order dated June 19, 2014, Plaintiff was granted leave to amend. In his Amended Complaint and pertinent to this Appeal, Plaintiff/Respondent sought (i) an injunction enjoining Appellants from interfering with or otherwise obstructing Plaintiff's right-of-way (as more fully hereafter defined, the "Easement"); (ii) a declaration that the Easement extends to the edge of Appellants' property and that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing light water craft and enable Plaintiff to launch water craft from the Easement.

In their Answer to the Amended Complaint, Appellants admit the existence and origin of the Easement. Appellants also admit that they, along with the adjacent property owner, excavated the cove where Appellants' property is located. Finally, Appellants assert that the easement cannot be unilaterally expanded or changed by Plaintiff or its predecessors in title, and that the termination point of the Easement is a point on Appellants' Property before the waters of Lake Murray.

A hearing was scheduled for October 16, 2014; however, prior to the hearing the parties reached an agreement that a third surveyor would be appointed by the surveyors previously retained by the parties, with the opinion of the third surveyor being binding on the parties. Following the hearing, Judge Strickland found the results of the third party surveyor (in addition to the surveyor that each party had previously retained) inconclusive and required the parties to proceed with a merits hearing on April 28, 2015.

Following the April 28, 2015 merits hearing, Judge Strickland found for the Plaintiffs and entered his order on July 29, 2015. Appellants filed their Motion Pursuant to Rule 52 and Rule

59, SCRCF on August 10, 2015 which was denied after a hearing by Order entered December 4, 2015. On January 8, 2016, Appellants filed their Notice of Appeal.

STATEMENT OF FACTS

This appeal involves the scope of an easement granted by Appellants' predecessor in title to Respondent's predecessor in title. By deed dated July 28, 1976, recorded August 3, 1976 in the Office of the Register of Deeds for Richland County, South Carolina ("Land Records") in Deed Book D393 at Page 150 (the "Easement Deed"), Woodberry Utilities, Inc. conveyed to Jay Clark Case the following described easement (the "Easement"):

A non exclusive Right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree (sic) contour of Lake Murray.

Being part of the property conveyed to Woodberry Utilities, Inc. by deed from Betty A. Thompson dated 14 August 1973 and recorded 14 August 1973 in the RMC Office for Richland County in Deed Book D289 at Page 790.

(Easement Deed)(R., p. 166).

It is undisputed in this appeal that the Easement Deed contains a scrivener's error and should reference the 360-foot contour of Lake Murray. (Order dated July 20, 2015 P. 5)(R. p. 17).

By Corrective Deed dated September 24, 2014, recorded in the Land Records on October 2, 2014 in Deed Book 11431 at Page 18 ("Corrective Deed"), Hamilton Duncan conveyed to Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan, the following described property (the "Respondent's Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat

prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 150, being more particularly shown on the plat above referred to.

(Corrective Deed)(R. p. 186). A. Charles Craft, III and Manita B. Craft previously conveyed Respondent's Property to Hamilton Duncan and Christine A. Duncan by deed dated June 28, 2002, recorded in the Land Records on July 1, 2002 in Book R 680 at Page 383 ("Duncan Deed")¹. (Duncan Deed)(R. p. 188). Mr. and Mrs. Craft acquired the Respondent's Property by deed of Jay Clark Case dated December 15, 1995, recorded in the Land Records on December 19, 1995 in Deed Book 1293 at Page 688 ("Craft Deed") (Craft Deed)(R. p. 191). Jay Clark Case acquired Respondent's Property from Woodberry Utilities, Inc. by deed dated July 28, 1976, recorded in the Land Records on August 3, 1976 in Book D393 at Page 147 ("Case Deed"). (Case Deed)(R. p. 194). The legal description in the Case Deed is as follows:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a one acre tract on a plat prepared for R. J. Marsh, Inc. by Douglas E. Platt, Sr. dated March 25, 1976, to be recorded². Said lot, according to said plat is bounded and measures as follows, to-wit: ON the Northeast by Paved State Road #S-40-2265 whereon it measures 208' feet; on the Southeast by property now or formerly of SCE&G Co. whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc. whereon it

¹ The Duncan Deed contains a scrivener's error in the legal description of the Easement. (Order dated July 20, 2015 P. 4)(R. p. 16). Appellant has not appealed this ruling.

² Said plat was subsequently recorded in the Land Records in Plat Book Y at Page 1910. (*Plaintiff's Trial Exhibit 24*)(R. p. 205).

measures 208' feet; and on the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; be all measurements a little more or less.

During the period of Mr. Case's ownership of Respondent's Property, Site Consultants, Inc. prepared a plat for him dated April 25, 1988, recorded in the Land Records on May 3, 1988 in Book 52 at Page 1316 (the "Site Consultants Plat"). The Site Consultants Plat shows the Easement extending from the Respondent's Property line to waters of Lake Murray. (Trans. P. 23, L. 22-25, P. 24, L.1-10) (R., p. 64 Lines 22-25; p. 65 Lines 1-10) .

By deed dated August 11, 1995, recorded in the Land Records on August 14, 1995 in Deed Book 1273 at Page 242 ("Appellants' Deed"), Silver Pointe Cove Associates, Inc. conveyed to Roy R. Drasites and Elizabeth P. Drasites certain real property more particularly described as follows ("Appellants' Property"):

ALL THAT CERTAIN PIECE, PARCEL OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove Subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April 25, 1995 and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995³, to be recorded and having such metes and bounds as shown on said latter plat.

Silver Point Cove Associates, Inc. traces its ownership to Woodberry Utilities, Inc. *See (Plaintiff's Trial Exhibits 4 & 5)*(R. pp. 171-177).

As shown above, Appellants took title to Appellants' Property by reference to Plat Book 55 at Page 7241 (the "Silver Pointe Plat"). The Silver Pointe Plat shows the Easement burdening the entire length of Appellants' Property's southern boundary line. *See (Silver Pointe Plat)*(R. p. 239); (Trans. P.23, L.12-21)(R. p. 64 Lines 12-21). Appellants also had commissioned the Drasites Acquisition Plat, which also shows the Easement burdening the entire length of

³ Said plat was subsequently recorded in the Land Records in Plat Book 55 at Page 9030 ("Drasites Acquisition Plat"). (*Plaintiff's Trial Exhibit 22*)(R. p. 203).

Appellants' Property's southern boundary line. *See* (Drasites Acquisition Plat) (R. p. 203)(Trans. P. 24, L. 11-25, P. 25, L. 1-4) (R. p. 65, Lines 11-25; p. 66 Lines 1-4). Appellants also commissioned that certain "Plat of Survey Prepared For Roy R. Drasites & Elizabeth P. Drasites" dated December 15, 1997 prepared by Bostick Surveying (the "1997 Plat"). The 1997 Plat shows the elevations and yet continues to show the Easement extending to the edge of Appellants' Property.

At trial, both Mr. Dennis Johns, PLS and Larry W. Smith, PLS were qualified as experts in the field of surveying without objection. (Trans. P. 18, L. 6) (R. p. 59, Line 6); (Trans. P. 59, L. 9-10)(R. p. 100, Line 9-10). Both Mr. Johns and Mr. Smith testified that, in their expert opinion, the Easement burdens the entire southern property line of Appellants' Property. (Trans. P. 26, L. 12-16)(R. p. 26 Lines 12-16) (Trans. P. 64, L. 17-18)(R. p. 105 Lines 17-18). Mr. Smith explained on cross-examination that Woodberry Utilities, the grantor of the Easement Deed, gave an easement across its entire tract (Appellant's Property) because Woodberry Utilities did not own beneath the 360 contour. (Trans. P. 65, L. 3-19)(R. p. 106 Lines 3-19). Mr. Smith testified that, in his expert opinion, the Easement's purpose was to access Lake Murray and that the easement goes to the waters of Lake Murray, which is the 360 contour. (Trans. P. 64, L. 21-23)(R. p. 105 Lines 21-23)(Trans. P. 71, L. 6-10)(R. p. 112 Lines 6-10). As Mr. Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program testified, normally easements such as the one at issue in this case are to access Lake Murray. (Trans. P. 94, L. 18-20)(R. p. 135 Lines 18-20).

Appellants offered Carl W. Bostick "to give an expert opinion on the 360 contour." (Trans. P. 102, L. 1-2)(R. p. 143 Lines 1-2). Mr. Bostick did not testify as to where the Easement ends nor could he identify to a reasonable degree of surveying certainty the location of

the 360 contour at the time of the Easement Deed, 1976. (Trans. P. 108, L. 15-17; P. 109, L. 11-12)(R. p. 149 Lines 15-17; p. 150 Lines 11-12). Mr. Bostick prepared a plat dated February 5, 2014 which showed the Easement extending to the edge of the Appellants' Property. (Trans. P. 107, L. 2-25)(R. p. 148 Lines 2-25) (*Plaintiff's Trial Exhibit 20*)(R. p. 201). As he testified, at that time, he thought the Easement ran to the lake. (Trans. P. 114, L. 4-9)(R. p. 155 Lines 4-9). Mr. Bostick could not identify the location of the Appellants' Property line with Lake Murray, and testified "I did a '97 and I tied in some irons that – I wasn't a hundred percent sure." (Trans. P. 112, L. 23-24)(R. p. 153 Lines 23-24).

When SCE&G conveyed to adjoining landowners the fringe lands, they conveyed to the 360 contour. (Trans. P. 90, L. 12-19)(R. p. 131 Lines 12-19). As Mr. Boozer testified, it is rare that a property owner owns land beneath the 360 contour of Lake Murray. (Trans. P. 91, L. 17-22)(R. p. 132 Lines 17-22).

On cross-examination, Mr. Johns was asked whether the Easement Deed contained any ambiguity to which he repeatedly replied no, that in a surveyor's mind there is no ambiguity in the Easement Deed. (Trans. P. 28, L. 24-25, P. 29, L. 1-6)(R. p. 69 Lines 24-25; p. 70 Lines 1-6).

The 360 contour of Lake Murray can be changed by among other things, erosion, excavation, or construction. (Trans. P. 20, L. 2-21, P. 92 L. 3-14, P. 93, L. 11-16) (R. p. 61 Lines 2-21; p. 133 Lines 3-14; p. 134 Lines 11-16).

There was no evidence presented at trial of a dirt road having been around Appellant's Property, other than a reference on a Woodtrail subdivision plat. The Woodtrail subdivision was never implemented and Appellants presented no evidence of any deeds referencing the Woodtrail Subdivision Plat. (Trans. P. 110, L. 21-25; P. 111 L. 1-3)(R. p. 151 Lines 21-25; p. 152 Lines 1-3). Mr. Johns testified there is no evidence of a dirt road around the area of Appellants'

Property. (Trans. P. 56, L. 9-10)(R. p. 97 Lines 9-10). Mr. Smith testified that the reason the alleged road did not show up on other plats is “undoubtedly it wasn’t there.” (Trans. P. 72, L. 25)(R. p. 113 Line 25). Mr. Boozer testified that if there were a road beneath the 360 contour, no one could use it at the time the Easement was conveyed. (Trans. P. 95, L. 24-25)(R. p. 136 Lines 24-25). Appellants moved into evidence the property itself and the Court visited the site on April 29, 2015. (Trans. P. 119, L. 1-25, P. 120 L. 1-7)(R. p. 160 Lines 1-25; p. 161 Lines 1-7). In Judge Strickland’s Order dated July 20, 2015, Judge Strickland based his finding of fact that no road existed in 1976 in part upon his view of the Easement, the Appellants’ Property and the Respondent’s Property. (Order dated July 20, 2015, p. 8)(R. p. 20).

STANDARD OF REVIEW

While the determination of the existence of an easement is a question of fact in a law action, the question of the extent of an easement is an action in equity. *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). Similarly, if the action is viewed as interpreting a deed, it is an equitable matter. *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E. 2d 633, 635 (1998). In an equitable proceeding, an appellate court may find facts in accordance with its own view of the preponderance of the evidence; however, the broad scope of review does not require the court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their creditability. *South Carolina Dept. of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 653-54, 667 S.E.2d 7, 12 (Ct. App. 2008). The Appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. *Rhett v. Gray*, 401 S.C. 478, 489, 736 S.E.2d 873, 879 (Ct. App. 2012). If an appellate court chooses to find facts in accordance with its view of the evidence, it

must state such findings of fact and the reasons for those findings. *Dearybury v. Dearybury*, 351 S.C. 278, 283, 569 S.E.2d 367, 369 (2002).

However, the construction of a clear and unambiguous deed is a question of law for the Court. *Hunt v. Forestry Comm'n*, 358 S.C. 564, 568, 595 S.E.2d 846, 848 (Ct. App. 2004). "If the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Id.* "While the trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court." *Id.*, 358 S.C. at 569, 595 S.E.2d at 848-9.

ARGUMENTS

I. DID THE MASTER-IN-EQUITY ERR IN RULING THAT THE PURPOSE OF THE EASEMENT WAS TO ACCESS LAKE MURRAY AND BURDENS THE APPELLANTS' ENTIRE SOUTHERN PROPERTY LINE WHERE THE EASEMENT EXPRESSLY MENTIONS A TERMINUS ON A CONTOUR OF LAKE MURRAY?

The Master-in-Equity committed no error in ruling that the Easement is for the purpose of accessing Lake Murray and that the Easement burdens the entire length of Appellants' southern property line.

"An easement is a right which one person has to use the land of another for a specific purpose." *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644, 647 (1944). The character of an express easement is determined by the nature of the right and intention of the parties creating it. *Lighthouse Tennis Club Village Horizontal Prop. Regime LXVI v. South Island Public Service Dist.*, 355 S.C. 529, 534, 586 S.E.2d 146, 148 (Ct. App. 2003). To determine the purpose of an easement, a court must evaluate the intention of the parties when the easement was granted." *Id.* "In doing so, the clear and unambiguous language in grants of easements must be construed

according to terms which parties have used, taken, and understood in their plain, ordinary, and popular sense.” *Id.* (internal citations and quotations omitted).

In construing a deed, the intention of the grantor must be ascertained and effectuated. *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252, 262 (2009). “In determining the grantor’s intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law.” *Id.* Such intention must be found within the four corners of the deed; however when the intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it. *Id.* “The instrument is not thereby varied or contradicted but is explained or corrected.” *Id.* If the language of an easement is not clear and creates ambiguity in any respect, all surrounding circumstances, including the construction which the parties have placed on the language, may be inquired into and taken into consideration. *Smith*, 312 S.C. at 466, 441 S.E.2d at 335. However, if there is any ambiguity in a deed, the ambiguity in the deed must be construed against the grantor. *Ward v. Woodward*, 287 S.C. 343, 345, 338 S.E.2d 347, 348 (1985); “A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.” *K & A Acquisition*, 682 S.E.2d at 262; *Rhett*, 401 S.C. at 492, 736 S.E.2d at 881. Therefore, if there is any ambiguity in the Easement, it must be construed against the Appellants. *See also Collins v. Griffin*, 2006 WL 7287897 at *4 (December 19, 2006) (holding that an ambiguity in an easement deed is construed against the grantors of the easement deed and their successors in title).

Appellants rely on *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423 (1981), for the proposition that “[i]f there is any ambiguity in an easement, the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the easement.” (Appellants’ Brief at 14). *Myrtle Beach Lumber* involved the situation in

which a supplier drafted a contract, not a deed, which authorized the owner to make checks payable to the contractor and the supplier. *Id.* 276 S.C. at 6, 274 S.E.2d at 425. The supplier, who knew the contractor was financially unstable, failed to submit invoices for materials used in the construction of the owner's residence. *Id.* *Myrtle Beach Lumber* does not involve a property conveyance or an easement. Because of this, the Court there correctly held that the contract should be construed against the drafter, the supplier. In the present case, the rule set forth in *Ward* is applicable and Appellants' reliance on *Myrtle Beach Lumber* is misplaced. Furthermore, the Appellants failed to present any evidence as to the identity of the Easement drafter.

Appellants contend that the Easement contains an ambiguity in that the term "360 contour" is not defined. "An ambiguous agreement is one capable of being understood in more ways than one, and agreement obscure in meaning through indefiniteness of expression or containing words having a double meaning." *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 465, 441 S.E.2d 331, 335 (Ct. App. 1994). However, "360 contour" must be understood in its plain, ordinary and popular sense. *Lighthouse Tennis Club, supra*.

Appellants have not offered another meaning for the term "360 contour." They have not demonstrated that the term is capable of being understood in more than one way or that it is indefinite in its expression. The only evidence presented is that the term "360 contour" means the 360 ft. contour of Lake Murray as is stated in the Easement Deed. Appellants contend that because a plat is not referenced in the Easement Deed there is ambiguity in the Easement Deed. However, in this case, the parties agree that 360 contour of Lake Murray means the 360 contour of Lake Murray as it existed in 1976. Simply stated, there is no ambiguity in the Easement Deed and the fact that no plat is referenced does not create an ambiguity. Furthermore, in the mind of

a surveyor, there is no ambiguity in the Easement Deed and the location and extent of the Easement can be located by a surveyor. (Trans. P. 28, L. 24-25; P. 29, L. 1-6)(R. p. 69 Lines 24-25; p. 70 Lines 1-6).

Appellants have not offered any evidence or testimony as to the location of the 360 ft. contour in 1976. Their expert witness, Mr. Bostick, testified that he did not know where the 360 contour was in 1976. (Trans. P. 109, L. 11-12)(R. p. 150 Lines 11-12). However, Mr. Johns and Mr. Smith testified that the 360 contour was the property line of Appellants' Property with Lake Murray and that the Easement burdens the entire length of Appellants' southern property line. (Trans. P. 26, L. 12-16)(R. p. 67 Lines 12-16) (Trans. P. 64, L. 17-18)(R. p. 105 Lines 17-18). Moreover, when SCE&G conveyed the fringe lands to the adjoining property owners, they conveyed to the 360 contour. (Trans. P. 90, L. 12-19)(R. p. 131 Lines 12-19). There has been no evidence of any conveyances affecting the Appellants' property line with Lake Murray. The only reasonable interpretation of the Easement is that the Easement burdens the entire southern property line of Appellants' Property meaning to the 360 contour, the Appellants' boundary with Lake Murray.

Appellants have attempted to create an ambiguity based on the Woodtrail Plat, Defendant's Trial Exhibit 13 (hereafter the "Woodtrail Plat") which purports to show a dirt road beyond Appellants' Property. (Woodtrail Plat)(R. p. 235). Even this argument is flawed because the Woodtrail Plat shows the Easement burdening the entire length of Appellants' Property's southern boundary. *Id.* Even if taken as true, Appellants' argument leads to the unescapable conclusion that the Easement burdens the Appellants' Property's entire southern boundary. However, the Woodtrail Plat may not vary or contradict the Easement Deed. *K & A Acquisition*, 682 S.E.2d at 262. It may only explain or correct the Easement Deed. *Id.* The Easement Deed

specifically states “extending from the property line of (Respondent’s Property) to the 360 (foot) contour of **Lake Murray.**” (Easement Deed)(R. p. 166) (emphasis added). Implicit in this language is that the Easement is to access Lake Murray. The Easement references Lake Murray, making it inferable that the grantor’s intent in granting the Easement was for the purpose of giving access to Lake Murray. The Easement Deed was granted well before the Woodtrail Plat. Any ambiguity which the Woodtrail Plat may create contradicts the language of the Easement Deed and should therefore be disregarded.

Likewise, Appellants contend that the Easement is for the purpose of reaching Johnson Marina Road via the alleged dirt road based on the Woodtrail Plat. Appellants further contend on appeal that the dirt road is shown on a 1960 Plat, *Plaintiff’s Exhibit 21*. (Appellants’ Brief at 10)⁴. As Mr. Johns testified, the Woodtrail Plat shows that the alleged dirt road is taken from a County tax map, not that it was actually in existence in 1981 or that it was ever actually there. (Trans. P. 37, L. 19-20; P. 56, L. 9-10)(R. p. 78 Lines 19-20; p. 97 Lines 9-10). Mr. Smith testified that the Woodtrail Plat states the road was taken from the tax maps, that there are often problems with tax maps and that the 1960 fringe land Plat does not show a road. (Trans. P. 73, L. 11-17, P. 75, L. 13-25, P. 76, L. 1-7)(R. p. 114 Lines 11-17; p. 116 Lines 13-25; p. 117 Lines 1-7). The Easement Deed specifically mentions Lake Murray, leading to the inference that its purpose was to reach Lake Murray. Mr. Johns and Mr. Smith both testified that the Easement’s purpose was to reach Lake Murray. (Trans. P. 26, L. 12-16)(R. p. 67 Lines 12-16) (Trans. P. 64, L. 17-18)(R. p. 105 Lines 17-18). Appellants’ witness, Mr. Boozer, testified that, in his experience, easements such as the one at issue in this case are to reach Lake Murray. (Trans. P. 94, L. 18-20)(R. p. 135 Lines 18-20). Only Mr. Bostick, after being asked by the Appellant

⁴ This argument of fact was not raised to the trial court until Appellants’ Rule 59(e) Motion.

himself to change his February 5, 2014 plat, testified that the Easement is for the purpose of reaching Johnson Marina Road.

Even if the Court finds “360 contour” ambiguous, the court must construe the Easement against the grantor, Appellants’ predecessor-in-title and find that the Easement burdens the entire southern boundary of Appellants’ Property and that the purpose is to reach Lake Murray. *See K & A Acquisition, supra; Ward, supra; Collins, supra.* As set forth in more detail above, even considering the evidence presented by Appellants, such evidence fails to demonstrate the Easement does not burden their entire southern boundary or that the Easement is for the purpose of reaching Johnson Marina Road. This theory does not make logical sense. As Mr. Boozer testified, even if the road were in existence in 1976, no one could use it at the time the Easement was conveyed. (Trans. P. 95, L. 24-25)(R. p. 136 Lines 24-25). Under Appellants’ theory, the Easement, at the time it was granted would have served no purpose at all. It could not be used for any purpose, much less the purpose Appellants have attributed to it.

Furthermore, the Woodtrail Plat shows the Easement extending to the southern boundary of Appellants’ Property. Appellants’ theory is self-contradictory, has no evidence to support it, and is illogical.

The Easement Deed is unambiguous and should be interpreted to give effect to the grantor. As stated in the Easement Deed, the Easement runs from Respondent’s Property to the 360 contour of Lake Murray. The surveyors all agreed at one point that the Easement burdened the entire southern property line of Appellants’ Property. The language of the Easement itself infers that the intent of the grantor was to give access to Lake Murray. If the Court finds the Easement Deed contains an ambiguity, that ambiguity is construed against the grantor, Appellants’ predecessor in title. Therefore, the Master did not err in his ruling that the purpose

of the Easement is to reach Lake Murray and that the Easement burdens the entire southern boundary of Appellants' Property. The Master should be affirmed.

II. DID THE MASTER-IN-EQUITY ERR IN RULING THAT RESPONDENT MAY UTILIZE THE EASEMENT FOR VEHICULAR USE TOWING LIGHT WATERCRAFT?

- a. Appellants' argument is not preserved for appellate review, or has been abandoned.*

This issue was raised for the first time on Appellants' Rule 59(e) motion. Appellants failed to raise the issue of vehicular use during the merits hearing, therefore this argument is not preserved for appellate review. See *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *Small v. Hunt*, 98 F.3d 789, 798 (4th Cir. 1996) (requiring a party seeking to present new evidence in a Rule 59(e) motion to "produce a legitimate justification for not presenting the evidence during the earlier proceeding"); 11 Wright et al., FEDERAL PRACTICE AND PROCEDURE § 2810.1 ("The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment"); see also *In re Reese*, 91 F.3d 37, 39 (7th Cir. 1996) ("A motion under Rule 59(e) is not authorized to enable a party to complete presenting his case after the court has ruled against him.").

Moreover, although Appellants assert the Master erred in ruling the Easement is for vehicular use, they cite no case law or citations in their argument. Therefore Appellants have

abandoned this argument. *See MI Co., Ltd. v. McLean*, 325 S.C. 616, 627, 482 S.E.2d 597, 603 n.6 (Ct. App. 1997).

b. The Easement is for vehicular use, including towing light watercraft

The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. *Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545, 549 (1943). “The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated.” *Id.* “Although to the extent of the easement, the rights of the easement owner are paramount to those of the landowner, the easement owner’s rights are not absolute but are limited, so the owners of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more.” *Id.*

Appellants have no standing to enforce the Lake Murray Shoreline Management Plan. “Standing refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Bank of America, N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013). Any disagreement over Respondent’s rights below the 360 contour of Lake Murray and any enforcement of the Lake Murray Shoreline Management Plan would be between Respondent and SCE&G, not Respondent and Appellants.

The width of the Easement (20’) is far larger than is necessary for solely pedestrian access. It is inferable from its width that the Easement was for vehicular access, including by vehicle towing light watercraft. The use of the Easement by vehicle towing light watercraft is

incident and necessary to the Easement's proper use and enjoyment. It is not an additional burden on the Appellants' Property, the servient estate.

As to Appellants' contention that the Lake Management Shoreline Management Plan does not permit a boat dock or boat ramp on the Easement, at no point has Respondent sought to construct a boat ramp or boat dock on the Easement. This action does not concern the construction of a boat ramp or boat dock on the Easement.

The use of the Easement by vehicle towing light watercraft is not an additional burden on Appellants' Property and is as little burdensome as was contemplated by the grant of the Easement. The Easement is well over the width needed for purely pedestrian access. Appellants do not have standing to enforce the Lake Murray Shoreline Management Plan and any disagreement over the enforcement of that plan would be between Respondent and SCE&G, not Respondent and Appellants. Therefore, this Court should affirm the Master's ruling.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the Master's rulings.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted,



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Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

RECEIVED

AUG 10 2016

SC Court of Appeals

Trial Court Case No. 2013-CP-40-05740
Appellate Case No. 2016-00046

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

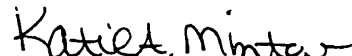
Roy Drasites and Elizabeth Drasites.....Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the following as indicated hereinbelow, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

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August 10, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

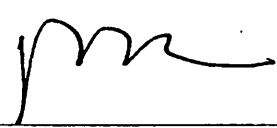
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SC Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

Roy Drasites and Elizabeth Drasites Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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I. The Master-in-Equity-in-Equity erred in ruling that the purpose of the Easement is to access Lake Murray and burdens the entire southern property line of Appellants' Property.

Respondent contends Appellants' argument disproving this finding is flawed because the Woodtrail plat shows the easement burdening the entire length of Appellants' property's southern boundary. (R. p. 95, Lines 17-25) This contention does not defeat Appellants' argument that the easement did not grant access rights to Lake Murray because when you look at the Woodtrail plat you see that the road in question is contiguous to the termination point of the easement and the waters of Lake Murray were on the opposite side of the road. (R. p. 235) The waters of Lake Murray, in 1976, did not reach this road area. This Woodtrail plat does not contradict or vary the easement Respondent relies upon; only visibly confirms the purpose of the easement (i.e. access to the road). (R. p. 235) Respondent then argues on this point that implicit in the easement language is access to Lake Murray and states easement referenced to Lake Murray. This is misplaced. The easement language does not have language stating there is access to Lake Murray. (R. p. 166) The only reference to Lake Murray is to the fact the easement terminates at the 360° contour of Lake Murray. (R. p. 166) The only logical reason that the easement states this is that the grantor only owned the property to the 360° contour of Lake Murray. (R. p. 104, Lines 5-7)

The burden of proving an easement is on the party claiming it. *David v. Gowen*, 83 Idaho 204, 360 P2s 403, 88 ALR2d 1192; *Schnider v. M. E. H. Realty Invest. Co.*, 239 Mo App 546, 193 SW 2d 69; *Hollingsworth v. Williamson* (Tex Civ App) 300 SW2d 194. Accordingly, the burden of proof rests with the person asserting it to show the existence of all facts necessary to create by an easement appurtenant to his estate. *Brown v. Fuller*, 165 Mich 162, 130 NW 621;

Schnider v. M. E. H. Realty Invest. Co., 239 Mo App 546, 193 SW 2d 69; *Trater v. Rauch*, 154 Ohio St 286, 43 Ohio Ops 186, 95 NE2d 685; *Othen v. Rosier*, 148 Tex 485, 226 SW2d 622.

Implicit in Respondent's burden would be to prove that it can actually use the easement for the purpose intended. Respondent cannot prove that it has legal access to Lake Murray with SCE&G. The language of the Master-in-Equity's Order indicates Respondent had a legal right for access to Lake Murray for the purposes stated in the Order (i.e. launching a light watercraft into Lake Murray). (R. p. 24) The testimony of Tommy Boozer, Manager of South Carolina Electric & Gas Company's Lake Murray Shoreline Management Program, testified that the property owned by South Carolina Electric & Gas Company below the 360° degree contour came under the jurisdiction of SCE&G. (R. p. 124, Lines 8-9) Larry Smith, former surveyor employee of South Carolina Electric & Gas Company who had dealt with fringe land issues during his professional career, indicated the same. (R. p. 106, Lines 23-25) The Lake Murray Shoreline Management Plan makes South Carolina Electric & Gas Company responsible for enforcing Federal Energy Regulatory Commission Directives regarding unauthorized uses of Lake Murray waters and land below the 360° degree contour elevation. (R. p. 213) The easement rights that the Respondent would have would end at the 360° degree contour because that is the termination point of the easement by the language description in the easement. (R. p. 166) The Respondent would be subject to approval from South Carolina Electric & Gas Company as to its access to Lake Murray and any use of the waters of Lake Murray.

Although the Master-in-Equity did view the property in question, there is no findings of fact in his Order as to his viewing of the property.

Appellant restates its facts as to this error by the Master-in-Equity and its argument which is set forth in the Initial Appellants' Brief which is denoted as "Facts as to Argument II" and "Argument II".

II. The Master-in-Equity-in-Equity erred in ruling that Respondent may utilize the easement for vehicular use towing light watercraft?

a. Appellants' argument is not reserved for Appellate review, or has been abandoned.

The Master-in-Equity found and concluded that the intention of the parties to the easement was that the Respondent be granted the right of ingress/egress and access to Lake Murray, including by vehicle towing and launching light watercraft. (R. p. 12) Respondent contends that Appellant did not reserve, for Appellant review, this ruling by the Master-in-Equity. This contention is based on the argument that this issue was raised by the Appellant for the first time on Appellants' Rule 52 and 59 Motion. This contention is misplaced. Respondent's Amended Complaint alleged he had a right to use the easement for vehicular use towing light watercraft. Appellants' Answer denied this allegation. (R. p. 33) This issue was therefore before the Court and Respondent had the obligation to prove, by preponderance of evidence, this allegation. Respondent has failed to prove by preponderance of evidence this allegation. Appellants' Brief will hereafter state its argument on that particular matter.

Even though this issue was raised, Rule 52(b) specifically states that the sufficiency of the evidence in a non-jury matter may be raised in the appellate courts even though there was no motion challenging these findings or a motion for a directed verdict or a motion for judgment. *Norell Forest Prods. v. H&S Lumber Co.*, 308 S.C. 95, 417 S.E.2d 96 (Ct. App. 1994).

b. The easement is for use including vehicular towing of light watercraft.

As a general rule, to constitute a grant of an easement, any words clearly showing the intention to grant an easement are sufficient. 25 Am.Jur.2d. *Easement and Licenses* §15, at 512 (2004). “Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention.” *Smith c. Comm’rs of Pub. Works of City of Charleston*, 312 S.C. 460, 441 S.E.2d 331, 335 (Ct. Appl 1994).

The easement in question is for ingress and egress from the grantor’s property to the 360° contour of Lake Murray but is not specific as to access purpose. There is no plat to show what is located at the termination point of the easement or the location of the 360° contour. (R. p. 166)(R. p. 69, Lines 20-23). Appellant believes these facts trigger the need for the Court to look beyond the easement itself for interpretation of the intent of the parties. The testimony of Respondent’s expert indicated the same. The Respondent’s expert testimony indicated the 360° contour moved inward from Lake Murray. (R. p. 61, Lines 1-2) Respondent’s expert further indicated if there was a survey involved we would not be here today. (R. p. 61, Lines 17-18)

“If the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction which the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect.” 25 Am.Jur.2d *Easements* §18, at 516 (2004). Cited as *Ten Woodruff Oaks, LLC v. Point Development, LLC*, 385 S.C. 174, 638 S.E.2d 510.

Circumstances surrounding the origin of the easement may also be considered in construing the easement. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972)(case applies to restrictions but restrictions are contractual in nature as are easements).

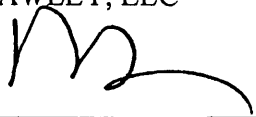
Respondent has failed to prove by preponderance of evidence the easement is for use including vehicular towing of light watercraft. Respondent and Appellants both presented evidence “outside the four corners of the easement”, without objection, from three surveyors to help the Court in interpretation of this easement. Any desire by the Respondent to limit the Court’s interpretation of easement to the easement language itself has been waived.

Respondent presented no evidence from the grantor of the easement as to its meaning. Respondent presented no evidence as to his interpretation of the easement nor as to his use of it, including vehicular towing. Respondent placed into evidence the easement document in question (R. p. 166) a plat prepared by Douglas Platt, surveyor that shows the Respondent’s lot but not the easement (R. p. 205) and a plat prepared by Site Consultants in 1988 showing the easement in question (R. p. 199). None of these plats corroborate the right of the Respondent to use the easement for vehicular towing of light watercraft. The Master-in-Equity’s Order only bases his decision, as to the specific access use of the easement, on the physical existence of Lake Murray at the time of the execution of the easement and that it was twenty (20’) feet wide (R. p. 24). The plat which is closest in time to the easement execution is the Woodtrail Plat prepared in 1981. (R. p. 235) This plat shows a road connected to the easement in issue. The physical presence of said road was questioned by the Respondent. However, that portion of the Appellants’ property, which is fringe land, was conveyed to Appellants’ predecessor-in-title shows the same road in existence in 1960, Defendant’s Trial Exhibit 7, and SCE&G reserved an easement in said road. (*Defendant’s Trial Exhibit 9*)

CONCLUSION

Appellants contend that that the preponderance of the evidence does not support the conclusions by the Master-in-Equity that the use of the easement includes access to Lake Murray by vehicular towing and launching of watercraft. Preponderance of the evidence supports that the purpose of the easement was to gain access to a dirt road shown on a plat of Woodtrail Subdivision which road connected to Johnson Marina Road and the easement does not run the entire length of the Appellants' southwest property line, leaving some portion of Appellants' property free from the burden of the easement, which would prevent Respondent from reaching the lake without trespassing on the Appellants' property. Appellants contend that any access to Lake Murray by the Respondent for vehicle towing and launching of watercraft would be determined by South Carolina Electric & Gas Company based on its mandate from the Federal Energy Regulatory Commission if the Respondent wishes to access the property owned by South Carolina Electric & Gas Company which is below the 360° degree contour along the Appellants' property.

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Lexington, South Carolina
September 8, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

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v.

Roy Drasites and Elizabeth Drasites Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief of Appellants complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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Lexington, South Carolina
September 8, 2016

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A.
Duncan, Respondent,

v.

Roy Drasites and Elizabeth Drasites, Appellants.

Appellate Case No. 2016-000046

Appeal From Richland County
Joseph M. Strickland, Master-in-Equity

Unpublished Opinion No. 2018-UP-211
Submitted March 28, 2018 – Filed May 16, 2018

AFFIRMED

James Randall Davis, of Davis Frawley Anderson
McCauley Ayer Fisher & Smith, LLC, of Lexington, for
Appellant.

Michael W. Tighe and George Albert Taylor, of Callison
Tighe & Robinson, LLC, of Columbia, for Respondent.

PER CURIAM: Elizabeth and Roy Drasites appeal an order of the
Master-in-Equity declaring that Hamilton Duncan has an easement over their

property for the purpose of accessing Lake Murray and enjoining them from interfering with Duncan's use of the easement. The Drasites argue the master erred by (1) finding the easement was intended to allow the dominant estate access to Lake Murray and therefore burdens their entire property line, and (2) concluding Duncan can use the easement to launch small watercraft into the lake. We affirm.¹

1. We find the master did not err in declaring that Duncan's easement extends the entirety of the Drasites' property line to its boundary with Lake Murray. See *Walker v. Brooks*, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015) ("On appeal from an action in equity, [the appellate court] may find facts in accordance with its view of the preponderance of the evidence."); *Laughon v. O'Braitis*, 360 S.C. 520, 524–25, 602 S.E.2d 108, 111 (Ct. App. 2004) ("However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the [master] was in a better position to assess the credibility of the witnesses.").

It is undisputed Duncan and the Drasites are owners of two adjacent properties located on an inland cove of Lake Murray; the Drasites' property abuts the water and is situated between the lake and Duncan's one acre parcel. Additionally, it is undisputed Duncan and the Drasites acquired their respective properties subject to an easement granting Duncan a right of access over the Drasites' property to a terminus at the "360[' foot] contour of Lake Murray." Furthermore, the uncontroverted testimony at trial indicated the 360' foot contour is Lake Murray's high-water mark and represented the boundary between the lake—managed by South Carolina Electric and Gas (SCE&G)—and privately-owned property. Accordingly, we agree with the Master's determination that the easement's terminus at the "360[' foot] contour of Lake Murray" refers to the lake's boundary with the Drasites' property. We do not believe it was the grantor's intent to give the dominant estate a right of access to a point just shy of the lake depending on whether the water level is high or low; or, as was also argued based on a plat outside the of the parties' chain of title, for the easement to provide access to a dirt road traversing the southern boundary of the Drasites' property short of and leading away from the lake. See *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) ("A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." (quoting 28A C.J.S. *Easements* § 57 (1996))); *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("Common sense and good faith are the leading

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

touchstones of construction of the provisions of a[n] [easement]"); *Smith v. Comm'rs of Pub. Works of Charleston*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994) ("In determining the extent of an easement . . . , consideration must be given to what is essentially necessary to the enjoyment of the [dominant] property."). Finally, although there was no plat prepared contemporaneously with the easement, we note that, with the exception of the plats prepared for this litigation, all of the plats in the parties' chains of title show the easement terminating at the waters of Lake Murray.

2. We find the master did not err in concluding Duncan may maintain the easement in a manner that allows him to launch small watercraft into Lake Murray. The Drasites acknowledge the existence of an easement for a "road running generally along the [s]outheastern boundary" of their property. The easement itself is twenty feet wide, which is wide enough for a vehicle to traverse. Moreover, the Drasites did not present evidence illustrating how Duncan's ability to use the easement in such a manner would harm them or their property. Finally, Duncan is responsible for bearing the cost of maintaining the easement, and any improvements would be subject to SCE&G's approval. *See Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943) ("[A] grant or reservation of an easement in general terms is limited to a use [that] is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated."); *Rhett v. Gray*, 401 S.C. 478, 494, 736 S.E.2d 873, 881 (Ct. App. 2012) ("The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more."). Based on the foregoing, we agree with the master that the ability to carry and launch small watercraft is incident to the enjoyment of the easement and would not be an undue burden on the Drasites' property.²

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

² Our decision should in no way be construed as providing Duncan unbridled authority to remove any permanent fixtures the Drasites placed on their property for landscaping or support purposes.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

Joseph M. Strickland, Richland County Master-in-Equity

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Appellate Case No.: 2016-00046

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MAY 31 2018

SC Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as Personal
Representative of the Estate of Christine A. Duncan..... Respondent

v.

Roy Drasites and Elizabeth Drasites..... Appellants.

NOTICE OF MOTION AND MOTION TO RECONSIDER
PURSUANT TO SC RULES OF APPELLATE COURT RULE 221

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OTHER AUTHORITIES

28A C.J.S. <i>Easements</i> § 57 (1996).....	3

A petition for rehearing shall be in accordance with Rules 221 and 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the Court.

BACKGROUND

On appeal from an action in equity, [the appellate court] may find facts in accordance with its view of the preponderance of the evidence.”); *Laughon v. O’Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 111 (Ct. App. 2004) (“However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the [master] was in a better position to assess the credibility of the witnesses.”)

By Order dated May 16, 2018, this Court ruled: “Based on the foregoing, we agree with the master that the ability to carry and launch small watercraft is incident to the enjoyment of the easement and would not be an undue burden on the Drasites’ property.”

The Court also ruled that: “We do not believe it was the grantor’s intent to give the dominant estate a right of access to a point just shy of the lake depending on whether the water level is high or low; or, as was also argued based on a plat outside the of the parties’ chain of title, for the easement to provide access to a dirt road traversing the southern boundary of the Drasites’ property short of and leading away from the lake.”

CASE LAW

Appellate cites the following cases in support of its Motion to Reconsider.

1. “A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.” (quoting 28A C.J.S. *Easements* § 57 (1996)); *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm’n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

2. The rights of one claiming an easement by express grant are limited within the scope of the privilege. The extent of the servitude is determined by the terms of the grant. *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E. (2d) 420 (1950); *Gordon v. Hoy*, 211 Va. 539, 178 S.E. (2d) 495 (1971).

3. A plat can be admitted in evidence even though it was not referred to in the owner's chain-of-title. *Culbertson v. Culbertson*, 273 S.C. 103, 254 S.E.2d 558 (S.C. 1979).

LEGAL ANALYSIS

Using the standards set forth in Rule 221, Appellant argues the following to support the position that the Master's decision is not supported by preponderance of evidence:

1. Respondent's easement gives the legal right to travel (ingress/egress) the distance "extending from the property line of Respondent's property to the 360 degree contour of Lake Murray." The easement states it is an "ingress/egress" easement. The grantor of the easement, Woodberry Utilities, owns the property that contains the "to be travelled" distance. Respondent's easement involves the distance described in the document, "extending from the property line of Respondent to the 360° contour of Lake Murray. The Respondent is intending to try and change and broaden the "intent" of the Respondent from an ingress/egress easement only to one that includes "lake access" to Lake Murray. See Plaintiff's Trial Exhibit 1.

2. In order to travel from the Respondent's property to access Lake Murray requires two easements because two separate properties are involved. The Respondent's easement provides the ingress/egress to the property, owned in 1976 by Woodberry Utilities. Once at the waters of Lake Murray, one needs a second easement to access Lake Murray owned by SCE&G. It is impossible for one easement to do both tasks because the ingress/egress property is owned by a different party than the one that owns Lake Murray.

3. Respondent's deed did not reference a plat showing the termination point of the easement abutting the waters of Lake Murray. See Plaintiff's Trial Exhibit 1.

4. Respondent never testified as to his use of the access easement for launching a small watercraft. See Order of Master dated July 2015; Page 1.

5. Lake Murray is owned/controlled/managed by SCE&G and lake access to Lake Murray must be granted only by SCE&G for that property below the 360° contour. See Defendant's Trial Exhibit 3.

6. No documents were presented whereby SCE&G either granted Respondent "lake access" to Lake Murray. See Defendant's Trial Exhibit 1.

7. The easement on page 16 of SCE&G's manual gives the Drasites family their legal lake access but it does not give Hamilton Duncan an easement for lake access to Lake Murray because the easement on page 16 is for "lakefront" owners only (it doesn't apply to easement holders). See Defendant's Trial Exhibit 3, p. 16.

8. Respondent does not have the physical ability to launch a small watercraft from the granted easement distance because the easement terminates at the 360° contour and there is no granted access agreement from SCE&G for use of Lake Murray by Respondent. See Defendant's Trial Exhibit 1.

9. There are two conveyances dated October 28, 1960 (Exhibit 5) and August 14, 1973 (Exhibit 6), which indicate that there was a road, not the lake, at the time of the creation of the Respondent's easement which immediately abutted the termination point of Respondent's easement. See Plaintiff's Trial Exhibit 5; R.pp. 176, property description; Plaintiff's Trial Exhibit 6; R.pp. 179, plat referenced in deed (Plaintiff's Trial Exhibit 21 is incorporated into the legal description).

10. There is one plat (dated March 27, 1960) in the chain-of-title to Respondent's property which shows a road, not the lake, immediately abutting the termination point of Respondent's easement. See Plaintiff's Trial Exhibit 21.

11. There is one plat (dated May 1981), not in the chain-of-title to the Respondent's property which shows that in 1981 there was a road, not the lake, which immediately abutted the termination point of Respondent's easement. See Defendant's Trial Exhibit 13.

12. In this Court's Opinion, the Court indicated that: "Duncan is responsible for bearing the costs of maintaining the easement, and any improvements would be subject to SCE&G's approval." This paragraph seems to be indicating that the Court is recognizing that Respondent's use of the property beyond the termination point of his easement would have to be subject to SCE&G's approval. See Order, Ct. App., paragraph 2.

CONCLUSION

Since the easement language only indicated that it was for access purposes, it did not specify lake access and did not have a plat showing that the termination point of the easement adjoined Lake Murray. The easement is ambiguous. Circumstances beyond the face of the document are necessary to determine its purpose. To have use of Lake Murray by SCE&G by Respondent, there would have to be evidence of such which does not exist in this record. The deeds and plats referenced in this Motion are the closest in time as to the creation of the easement and reflect that this easement tied into an existing road and not Lake Murray. Preponderance of evidence supports the intent of the easement was access to the road which abutted the termination point of the granted easement.

Respectfully submitted,

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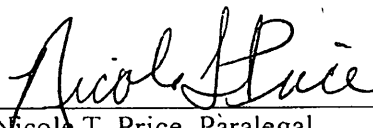
v.

Roy Drasites and Elizabeth Drasites.....

Appellants.

PROOF OF SERVICE

I, Nicole T. Price, paralegal with the law firm of DAVIS | FRAWLEY, LLC, do hereby
certify that I have served the **NOTICE OF MOTION AND MOTION TO RECONSIDER** on
Hamilton Duncan, Individually and Hamilton Duncan, as Personal Representative of the Estate
of Christine A. Duncan, by depositing a copy of it in the United States Mail, postage prepaid on
May 31, 2018, addressed to his attorneys of record, Michael W. Tighe, Esquire and George A.
Taylor, Esquire, Post Office Box 1390, Columbia, SC 29202.



Nicole T. Price, Paralegal
DAVIS | FRAWLEY, LLC
140 East Main Street
Lexington, South Carolina 29071

Lexington, South Carolina

ATTORNEYS FOR APPELLANTS

The South Carolina Court of Appeals

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A.
Duncan, Respondent,

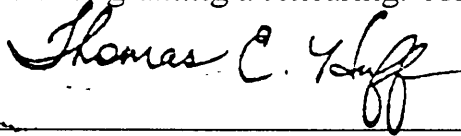
v.

Roy Drasites and Elizabeth Drasites, Appellants.

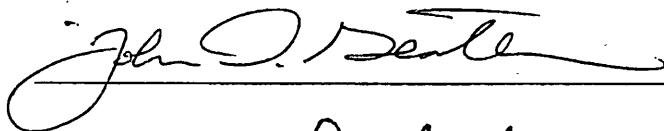
Appellate Case No. 2016-000046

ORDER

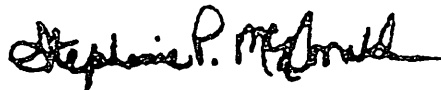
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



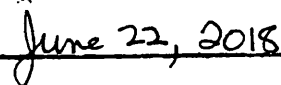
J.

Columbia, South Carolina

cc:

James Randall Davis, Esquire
Michael W. Tighe, Esquire

FILED



George Albert Taylor, Esquire
The Honorable Joseph M. Strickland