

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

Case No. 2004-CP-26-2075
Appellate Case No. 2012-212773

John Musick, ... Respondent

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ... Appellants.

**RECORD ON APPEAL
VOLUME II**

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Attorneys for Respondent

RECEIVED

MAY 17 2013

SC Court of Appeals

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Attorneys for Respondent

2004-CP-2-2075

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**

John Musick,

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v.

Thomas L. Dicks and Robert E.
Dicks, Jr.,

Appellants.

HORRY COUNTY
10 OCT 12 AM 10:29
CLERK OF COURT

Appeal From Horry County
J. Stanton Cross, Jr., Master-In-Equity

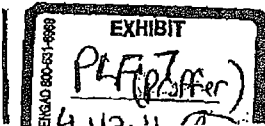
Unpublished Opinion No. 2010-UP-351
Heard June 8, 2010 – Filed July 7, 2010

REVERSED AND REMANDED

Demetri K. Koutrakos, of Columbia, for Appellants.

George M. Hearn, Jr., and Thomas C. Brittain, of
Conway, for Respondent.

PER CURIAM: This appeal arises out of cross motions for summary judgment before the Master-In-Equity. The court granted summary judgment in favor of Respondent John Musick (Musick) and dismissed the action.



Appellants Thomas L. Dicks and Robert E. Dicks, Jr. (Appellants) argue that the court erred in granting Musick's motion, in denying their motion, and in finding that Appellants violated the restrictive covenants of the subdivision by further subdividing a 2.67 acre parcel. We reverse the grant of summary judgment and remand for a trial on the merits.

FACTS

Appellants purchased a piece of property, known as Blocks 28 and 29, situated in Long Bay Estates off of Highway 17 in Horry County. The 1955 Plat of Long Bay Estates contains the following restriction:

(a) No lot shall be subdivided and no building, including porches or projections of any kind, shall be erected at a distance less than 40 feet from the front line of Blocks One (1) through Five (5) and not less than 20 feet from the front line on Blocks Six (6) through Twenty-Seven (27), ten feet from any side line and 20 feet from the rear.

As to all unsold lots, the Grantors reserve the right to change the boundary lines and the building lines thereof.

1955 Plat (emphasis in original). This restriction is also contained in a document recorded at the Register of Mesne Conveyances for Horry County in 1958 (the 1958 Restrictions). Both documents provided: "These Protective Covenants are recorded as Blanket Covenants covering all lots in Blocks 1-27, as shown on the Plat of Long Bay Estates dated May, 1955, compiled by Robt. L. Bellamy, Engineer."

In 1972, the Master-In-Equity issued a report, adopted as an order of the circuit court (the 1972 Order), regarding the rights of property owners in Long Bay Estates and the effect of the 1958 Restrictions on the property. The order provided Blocks 30, 32, and 34 were "subject to the restrictions of the same type and character as those . . . applicable to Blocks 1-27, inclusive." The order further stated:

In like manner the remaining portions of "old" Blocks 28 and 29, that is to say the area lying between the

rear of Blocks 24 and 25 and the southeasternmost "paved street" are subject to such residential restrictions, but with right of revision of the lot arrangement or for combination with abutting portions of lots in Blocks 24 and 25. The restrictions uniformly used in this area and the declaration . . . reserved to grantor the right to change boundary lines and building lines as to any unsold lots in any event.

In 2000, some property owners in Long Bay Estates were involved in litigation again regarding the restrictive covenants, resulting in another order interpreting the 1958 Restrictions (the DeCiero Order).

Carmen Ward conveyed the property as one lot to David W. Meese, Jr. and Leigh Ammons Meese in 1997. The Meeses conveyed Blocks 28 and 29 to Appellants in 2003.

Musick, as the owner of Lot 4 of Block 24, alleged in his complaint that he is entitled to a declaration that Appellants' attempts to subdivide Blocks 28 and 29 into seven individual lots violates the restrictive covenants applicable to all lots in Long Bay Estates. Appellants denied the allegations and counterclaimed, seeking a declaratory judgment finding that the alleged restrictions do not encumber Blocks 28 and 29.

Appellants and Musick each filed motions for summary judgment after this matter had been referred to the Master-In-Equity. Following a hearing, the court issued a "Final Order Ending Action" granting Musick's motion for summary judgment. Appellants filed a motion to reconsider. The court heard the parties' arguments on Appellants' motion to reconsider before issuing an order denying the motion. This appeal followed.

STANDARD OF REVIEW

Appellants argue the trial court failed to apply the correct standard in granting the motion for summary judgment. Musick contends that as the parties filed cross-motions for summary judgment, the hearing before the trial

court was essentially converted into a bench trial. We disagree with this contention.

When each party files a motion for summary judgment and the trial court grants one motion while denying the other, this court only reviews the grant of the motion for summary judgment, not the denial. Fuller v. Blanchard, 358 S.C. 536, 546 n.21, 595 S.E.2d 831, 836 n.21 (Ct. App. 2004). In Fuller, the case concerned cross-motions for summary judgment regarding two of Dr. Blanchard's defenses. Id. The trial court simultaneously granted Mrs. Fuller's motion for summary judgment and denied Dr. Blanchard's motion. Id. This court noted the parties had blurred the distinction between the two motions. Id. We stated:

Because the granting of a motion for summary judgment is appealable while the denial of a motion for summary judgment is not, we are addressing Dr. Blanchard's arguments to the extent he appears to challenge the circuit court's grant of summary judgment to Mrs. Fuller as an error of law based on the facts of the case, although, as stated, there has been an overlapping of these issues due to the procedural posture of the case. To the extent Dr. Blanchard appears to argue the court should have granted his motion for summary judgment, the denial of summary judgment is not properly before us and we do not address it.

Id.

Thus, we will review the grant of the motion for summary judgment applying the same standard that governs the trial court. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). Summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr.

368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). Even when there is no dispute as to the evidentiary facts, summary judgment should be denied when there is a dispute as to the conclusions or inferences that can be drawn therefrom. Wilson v. Style Crest Prods., Inc., 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

1. Appellants argue the court erred in granting summary judgment by holding the 1958 Restrictions encumber Blocks 28 and 29. We agree.

The trial court found that the 1972 Order acknowledged that the prohibition against subdivision only applied to Blocks 1-27, but the parties to the 1972 litigation "specifically agreed that the restrictions would be extended" to cover other blocks in the subdivision, including Blocks 28 and 29. In his final brief to this court, Musick agrees that "it is undisputed that the original language of the covenants stated they applied only to Blocks 1 through 27."

Restrictive covenants are contractual in nature. RV Resort & Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc., 386 S.C. 313, 320, 688 S.E.2d 555, 559 (2010). The words of restrictive covenants will be given their common, ordinary meaning attributed to them at the time of their execution. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication" Buffington v. T.O.E. Enters., 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009) (quoting Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006)). "[A]ll such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Id. In determining whether to enforce a restrictive covenant and enjoin a landowner from using their land in a manner that violates the covenant, courts should consider equitable doctrines. Id. at 393, 680 S.E.2d at 291. "The paramount rule of construction is to ascertain and give effect to the

intent of the parties as determined from the whole document." RV Resort, 386 S.C. at 321, 688 S.E.2d at 559 (quoting Taylor, 332 S.C. at 4, 498 S.E.2d at 863-64).

We find the 1958 Restrictions, by their express terms, do not apply to Blocks 28 and 29. Musick argues, and the trial court agreed, that the 1972 Order enlarged the 1958 Restrictions such that the restrictions are applicable to all lots in Long Bay Estates. Appellants argue the court should have construed the language in the 1972 Order in their favor when deciding this matter on Musick's motion for summary judgment. We hereby reverse the grant of summary judgment as to this issue and remand for a trial on the merits because there is a dispute as to the conclusions or inferences that may be drawn from the application of the 1972 Order to clarify the 1958 Restrictions. See USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); Wilson, 367 S.C. at 656, 627 S.E.2d at 735.

2. Appellants argue the court erred in granting summary judgment by finding the DeCiero Order operates to extend the prohibition against subdividing to include Blocks 28 and 29. We agree.

The trial court misquoted the DeCiero Order in its order denying the motion to reconsider as follows: "[o]n their face, it is clear the 1958 Restrictive Covenants apply to the entire Long Bay Estates subdivision." Rather, the DeCiero order states: "Thus it is clear the Restrictive Covenants apply to all of Blocks 1-27 of Long Bay Estates subdivision, including Block 11, Lots 1 and 2." Therefore, we find it was error for the trial court to rely upon the DeCiero Order in its grant of summary judgment to find that the 1958 Restrictions apply to Blocks 28 and 29. We reverse the grant of summary judgment on this issue.

3. Appellants argue the court erred in granting summary judgment by finding that the division of Blocks 28 and 29 into seven different lots, as shown on the 1955 Plat, constituted a mere "proposed plan" to subdivide. We agree.

The 1955 Plat and a map attached to the 1972 Order show Blocks 28 and 29 divided into seven different lots. The trial court concluded that the maps indicated only a proposed plan to subdivide Blocks 28 and 29 because

"[t]raditionally, dotted lines on maps indicate proposed boundary lines or subdivision proposals and are not symbolic of the final decree of the Grantor." Viewed in the light most favorable to Appellants, there is more than one reasonable inference that may be drawn from the evidence regarding whether or not the grantor intended for Blocks 28 and 29 to be subdivided into seven individual lots. Law, 368 S.C. at 434, 629 S.E.2d at 648. Therefore, we reverse the grant of summary judgment on this issue and remand for trial.

4. Appellants argue the court erred in granting summary judgment by finding that because they had actual notice of the 1972 Order and its restrictive effect on Appellants' use of the property, they could not avail themselves of the protection of the Shelter Rule. We agree.

Appellants presented evidence that the Horry County Clerk of Court indexed the 1972 Order only against the named defendants to that action. Carmen Ward, Appellants' predecessor in title, was a plaintiff and not a named defendant in the 1972 litigation. Therefore, when Appellants performed a title search for Blocks 28 and 29, the 1972 Order did not appear in their chain of title. Pursuant to Section 30-9-40 of the South Carolina Code (2007), proper indexing supplies inquiry notice of an instrument, while recordation without proper indexing supplies no notice at all. Thomas v. Thomas, 286 S.C. 294, 298, 333 S.E.2d 76, 78 (Ct. App. 1985). The failure to index a judgment as required by statute deprives it of its effectiveness as notice to subsequent purchasers. Id.

Appellants admit they had actual notice of the 1972 Order but seek the protection of their predecessors in title by arguing that the Meeses were bona fide purchasers for value without notice.

The "Shelter Rule" provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter's protective status. The purpose of this rule is to prevent a stagnation of property and to protect the first purchaser, who, being entitled to

hold and enjoy, must be equally entitled to sell. Otherwise, a bona fide purchaser might be prevented from selling the property for full value. . . . It is wholly immaterial of what nature the outstanding interest is, whether it is a lien or encumbrance, or a trust, or any other claim.

77 Am. Jur. 2d Vendor and Purchaser § 419 (2006). This court has recognized the Shelter Rule, holding the successor in interest of a bona fide purchaser for value stood in the same position as the bona fide purchaser even when the successor had notice of a lien. Liberty Loan Corp. of Darlington v. Mumford, 283 S.C. 134, 140, 322 S.E.2d 17, 21 (Ct. App. 1984). It explained: "[W]henever in a succession of purchasers you reach one who is innocent and purchases in ignorance, the title is thenceforth sanctified." Id.

The trial court found the Meeses' attorney testified in his deposition that he had advised the Meeses there was a strong possibility the restrictions applied to Blocks 28 and 29. However, Dusenbury testified that his recollection was that the restrictions were mis-indexed and that he did not pick them up in the chain of title. We find there is a question of fact as to whether the Meeses were bona fide purchasers for value without notice and hereby reverse the grant of summary judgment on this issue and remand for trial.

CONCLUSION

Accordingly, the decision of the trial court granting summary judgment is hereby

REVERSED and REMANDED.

FEW, C.J., and HUFF and GEATHERS, JJ. concur.

Sent Certified mail to David & Leigh Maese

LEGAL NOTICE

July 18, 2002

Dear property owner,

On March 14, 2000 the Honorable J. Stanton Cross, Master of Equity for Horry County ruled in favor of the plaintiffs (*numerous* Long Bay Estates Property Owners) concerning the 1958 Restrictive Covenants for Long Bay Estates and their current applicability to the properties located in our subdivision. These covenants are found in Plat Book 25, Page 22, Office of the Horry County Clerk.

Basically, the judgement makes it clear that all lots in the Long Bay Estates subdivision are subject to the 1958 restrictive covenants (*without exception*).

This decision also points to language found in the Adams case # 37417 from 1972 which makes it clear that blocks 28, 29, 30, 31, 32, and 33 are also bound by the 1958 restrictive covenants. *Enclosed please find a copy of the restrictive covenants for Long Bay Estates for your records.*

This case cost *some* of the property owners *over \$70,000.00* and was taken to protect the interests of *all* of the property owners of Long Bay Estates. The plaintiffs take this decision seriously and any attempt to violate these restrictive covenants will result in court action. *Any legal fees and costs associated with these actions would be assessed to the defendant.*

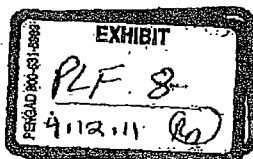
Also, any attempt to subdivide lots or breach the set back provisions of these restrictive covenants will be *immediately* brought before the court. It should be noted that *the set back provisions* of these covenants and all properties in Horry County begin at the property line (*not the road*). This matter was raised recently and Horry County Zoning states that *"all set back provisions begin at the owner's property line"*.

At this time I would respectfully request that you place a copy of this letter and the restrictive covenants with your deed.

This letter has been forward to all property owners, return receipt requested.

Respectfully,

Robert J. DeCiero
Robert J. DeCiero
4800 Yaupon Circle
Long Bay Estates
Myrtle Beach, SC 29575



ON FILE IN HORRY COUNTY CLERKS OFFICE
ATTACHED TO MAP IN PLAT BOOK 25, PAGE 22, RECORDED MAY 5, 1958

Restrictions to be imposed on the Residential Property in the Long Bay Estates Subdivision,
Myrtle Beach, Horry County, South Carolina

These Protective Covenants are recorded as Blanket Covenants covering all lots in Blocks 1 through 27, as shown on the Plat of Long Bay Estates dated May, 1955, compiled by Robt. L. Bellamy, Engineer.

(a) No lot shall be subdivided and no building, including porches or projections of any kind, shall be erected at a distance less than 40 feet from the front line on blocks one (1) through five (5) and not less than 20 feet from the front line on blocks six (6) through twenty-seven (27), ten feet from any side line and 20 feet from the rear.

As to all unsold lots, the Grantors reserve the right to change the boundary lines and the building lines thereof.

(b) No surface toilet shall be permitted on this property, but the purchaser shall construct and install at his own expense for any residential building on the said property, a septic tank of a type and character approved by the State Board of Health. Waste water from the premises, including that from the kitchen and bath, shall not be discharged or deposited upon the surface of the premises, but shall be disposed of so as not to create a nuisance or be offensive to sanitation. All garbage cans used on the premises shall be kept concealed.

(c) An easement and right of ingress and egress is hereby reserved in, upon and across a strip of land five (5) feet wide at the rear line of this lot for water pipes and for poles, wires, cables or other lines for transmission of electric current or telephone or other public utility services. These rights may be assigned by the Grantors.

(d) This property shall be used only for private residential purposes and no more than one dwelling containing not more than two apartments or living units each for the occupancy and use of not more than one family, with necessary outbuildings, shall be erected thereon. No garage apartments except for the use and occupancy of servants employed on the premises may be included in a garage building.

Plans for any building or structures to be erected on the property shall be first approved by the Grantors, before construction is started.

(e) The property hereby conveyed shall be kept free from any nuisance or from any objectionable condition or use which the Grantors find to be offensive or dangerous to the neighborhood.

(f) It is understood and agreed that any change in sidewalk, or street or driveways into this property, which changes are desired by the purchaser, are to be made at his expense and in accordance with plans acceptable to the Grantors.

(g) No one story residence shall be erected on this lot which contains less than 1200 square feet of floor area nor a two story residence containing less than 1600 square feet of floor area excluding porches, garages and storage space. No residence building shall be built more than two stories in height.

(h) No wells for water will be permitted to be dug or driven in the property, unless water facilities prove inadequate, or any private well dug to be done only with permission of Grantors.

(i) In addition to use for private residential purposes as set forth herein, the Grantors may use, lease or convey property within the bounds of lands herein described as Blocks 1, 2, and 3 for the following purposes:

Schools, Churches, Libraries and Community Center

(j) The Grantees shall preserve as many of the existing trees as possible in order to retain the wooded character of the community.

Carmen F. Ward & Carole Ward
3243 Calle de Deborah N.W.
Albuquerque, New Mexico 87104-3001

February 22, 2006

Mr. Robert DeCiero
4800 Yaupon Circle
Long Bay Estates
Myrtle Beach, S.C. 29575

RE: Lot 4, Long Bay Estates, Sold September 3, 1997 to M/M David Meese

Dear Mr. DeCiero:

After our recent telephone conversation, we are writing you once again regarding your concern about a 1972 court decision in which Carmen Ward was a plaintiff. Carmen Ward remembers that as the plaintiff in the case she had language placed in the judgment to protect her right of revision as Grantor concerning the property in question. She agrees that there was never any intention to allow for a subsequent property owner to have the right to subdivide in violation of the Restrictive Covenants for the Long Bay Estates subdivision.

After reviewing the judgment that you forwarded to us it is quite clear that the last sentence in the first paragraph on page 7, beginning with "In like manner", is referring to Carmen Ward's right of revision, as Grantor, and no one else.

We want to reiterate that Carmen Ward, as Grantor, elected to create one lot on that property and sold the property as one lot to M/M Meese on September 3, 1997.

Once again, we hope that this letter will assist you and we hope the neighborhood is successful in upholding the covenants, deed restrictions, zoning codes and wetland provisions that are still enforceable in Long Bay Estates subdivision.

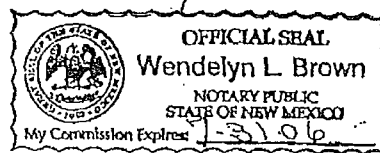
Sincerely yours,

Carmen F. Ward
Carmen F. Ward
Carmen F. Ward

Carole Ward
Carole Ward
Carole Ward



Wendelyn L. Brown
March 6, 2006



MAP OF

BLOCKS 30, 32 AND 34, LONG BAY ESTATES
SOUTH OF MYRTLE BEACH, Horry County, S.C.

SCALE: 1"=100'

DEC. 21, 1960

ROBERT L. BELLAMY, C.E.

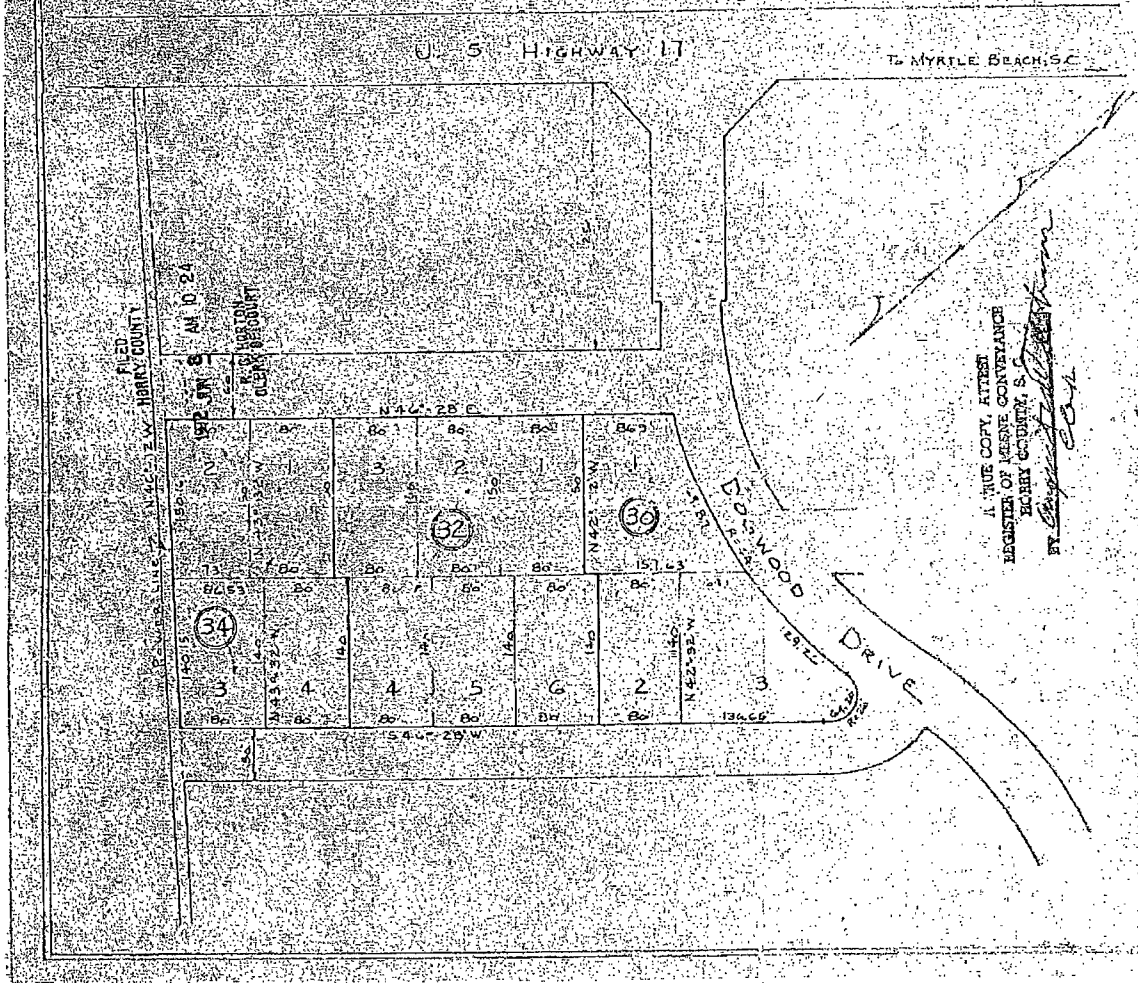


EXHIBIT
PLF 10
4-12-11 (C)

FILED
HORRY COUNTY
386 / 300
STATE OF SOUTH CAROLINA 1968 MAY 6 PM 2 36
COUNTY OF HORRY) CONVEYANCE OF REAL ESTATE
R. G. HARRIS
CLERK OF COURT

FREDERICK W. LEWIS, sole stockholder of Nursery Realty Corporation, a foreign corporation, authorized to do business in the State of South Carolina, died testate, a resident of Dade County, State of Florida, exemplification of his will being duly filed in the Probate Court for Horry County, South Carolina, Cabinet 1, Drawer 3, Package 46, Horry County Probate records.

Carmen F. Ward and Gene F. Lewis, as co-executrices of the Last Will and Testament of Frederick W. Lewis, deceased, thus succeeded to the sole ownership of the capital stock of Nursery Realty Corporation.

Pursuant to appropriate resolutions by the Board of Directors of the corporation, and with the unanimous consent and action of the stockholders, voluntary dissolution of Nursery Realty Corporation, and distribution of its assets to the stockholders in liquidation of the corporate assets is being effected simultaneously with the execution and delivery of this instrument, F. H. Kimmel as Vice President and Carmen L. Ward as Secretary of Nursery Realty Corporation being authorized, directed and empowered to execute such conveyances or transfers as may be necessary or desirable.

KNOW ALL MEN BY THESE PRESENTS that NURSERY REALTY CORPORATION, hereinafter called the Grantor, for and in consideration of the surrender and cancellation of all of the outstanding shares of capital stock of said corporation by Carmen F. Ward and Gene F. Lewis, Co-executrices of the Last Will and Testament of Frederick W. Lewis, Deceased, has granted, bargained, sold, transferred and released and by these presents does grant, bargain, sell, transfer and release unto the said Carmen F. Ward and Gene F. Lewis, as Co-executrices of the Last Will and Testament of

BY *[Signature]*
A TRUE COPY, ATTEST
REGISTER OF MORTGAGE CONVEYANCE
HORRY COUNTY, S. C.
[Signature]

EXHIBIT
PLF 11
4/12/11 (CD)

301

Frederick W. Lewis, Deceased, (hereinafter called the Grantor), and
to their successors and assigns:

All of the assets of any kind, whether real,
personal, tangible or intangible, belonging to
NURSERY REALTY CORPORATION, wherever same may be
situate, and of whatever name may consist, including
any easements, servient rights, powers of approval
reserved to Grantor in any conveyances of property,
use of trade or development name or names, and any
and all other assets, powers, or reservations of any
kind and nature.

There is expressly included, without limiting
the generality of the foregoing, the following
described or identified property, situate, lying
and being in Socastee Township, Horry County,
South Carolina:

PARCEL OR TRACT NO. 1

Those two (2) contiguous pieces, parcels
or tracts of land which were conveyed by Frederick W.
Lewis to Nursery Realty Corporation by deeds of
June 12, 1953 recorded June 23, 1953 in Deed Book
126 at page 1, Horry County records, and from
Frederick W. Lewis to Nursery Realty Corporation
dated April __, 1956, recorded April 30, 1956 in
Deed Book 171 at page 637, Horry County records,
reference being craved to said deeds and the record
thereof for more complete and detailed description.

EXCEPTING, HOWEVER, the following parcels or
lots of land, conveyed out of said tracts as shown
and represented on various maps of Long Bay Estates,
including map by T. M. Jordan dated September 8,
1953, with Block 9 added by R. L. Ballamy in May
of 1955, recorded in Plat Book 19 at page 56; area
comprising Blocks 24 and 25 mapped by R. L. Ballamy
September 9, 1956, Plat Book 21, page 118; and
Blocks 12, 13, 14 and 15, mapped by R. L. Ballamy
April 16, 1959, Plat Book 27, page 31; and an area
also shown on a map by R. L. Ballamy, C.E. recorded
in Plat Book 21 at page 149, Horry County records,
the parcels excepted, and the records of the deeds
of conveyance thereof, being the following:

IN BLOCK TWO (2):

Lot Two (2) sold, Book 134, page 191.

Lot Four (4) sold, Book 202, page 1.

IN BLOCK NINE (9):

- Lot One (1) sold, Book 157, page 295.
- Lot Two (2) sold, Book 178, page 220.
- Lot Four (4) sold, Book 165, page 225.
- Lot Five (5) sold, Book 195, page 258.

IN BLOCK TWELVE (12):

- Lot Five (5) sold, Book , page

IN BLOCK THIRTEEN (13):

- Lot One (1) sold, Book 232, page 7.
- Lot Two (2) sold, Book 189, page 529.
- Lot Three (3) sold, Book 210, page 230.

IN BLOCK FOURTEEN (14):

- Lot One (1) sold, Book 241, page 528.
- Lot Two (2) sold, Book 233, page 182.
- Lot Three (3) sold, Book 241, page 225.

IN BLOCK FIFTEEN (15):

- Lot One (1) sold, Book 228, page 41.
- Lot Two (2) sold, Book 228, page 38.
- Lot Three (3) sold, Book 240, page 529.
- Lot Four (4) sold, Book 313, page 54.

IN BLOCK TWENTY-THREE (23):

- Lot Three (3) sold, Book 248, page 598.

IN BLOCK TWENTY-FOUR (24):

- Lot Three (3) sold, Book 195, page 97.

IN BLOCK TWENTY-FIVE (25):

- Lot One (1) sold, Book 176, page 122.

PARCEL OR TRACT NO. 8

43.65 acres, more or less, Socastee Township, Horry County, South Carolina, shown and represented on map by Robert L. Balleny, C.E. dated April 27, 1967 and recorded in Plat Book 40 at page 54, being those portions of tracts 5 and 8 which were conveyed.

by Frederick W. Lewis to Nursery Realty Corporation November 23, 1948 by deed recorded November 30, 1948, Deed Book 61, page 8, after conveying away certain portions of said tracts, and conveyances in the development of Myrtle Dunes, and adjoining property, see Plat Book 9, page 70, and Plat Book 11, page 42, Horry County records.

The 43.65 acres of land, as shown and represented on the cited plat, are thus described by courses and distances:

Beginning at an iron corner N on the southeastern margin of U. S. Highway no. 17 and running thence South 41° 29' East 3378.20 feet to corner, and continuing same course 411.74 feet to iron O; thence South 38° 30' West 352.55 feet to iron N; thence North 42° 05' West 432.12 feet to iron N; thence South 41° 50' West 151.5 feet to iron N; thence North 42° 16' West 3446.49 feet to iron N on the aforesaid margin of highway; and thence along the highway North 49° 30' East 527.9 feet to the beginning.

There is also included in this conveyance any rights remaining in the Grantor in any undeveloped or reserved portions of Myrtle Dunes, expressly including any rights in area between front row lots and high water mark of the Atlantic Ocean.

—c00—

As an incident of transfer of assets the Grantor also assigns, transfers and sets over unto the Grantees that certain mortgage from Leroy R. Adams to Nursery Realty Corporation dated November ____, 1967, recorded December 19, 1967, Mortgage Book 458, page 471, Horry County records.

—c00—

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 premises before mentioned unto the Grantees, their successors and assigns forever.

Since this deed is being made by the Grantor in transferring all of its assets unto the Grantees, said deed is made without warranty.

304

WITNESS the execution of this instrument under the corporate seal, by action of the duly authorized officers, as of the 24th day of April, 1968.

Signed, Sealed and Delivered in the Presence of:

Luella R. Cooper
[Signature]

NURSERY REALTY CORPORATION (SEAL)

By: [Signature]
As Vice President

By: Carmen L. Ward
As Secretary

STATE OF FLORIDA

COUNTY OF DALLS

Personally appeared LUELLA R. COOPER (the

first witness) who, being sworn, says that he saw the within named Nursery Realty Corporation by P. H. Kimmel as Vice President and by Carmen F. Ward as Secretary, sign, seal and as the corporate act and deed, deliver the foregoing deed; and deponent with W. J. McLEOD, JR.

(the second witness) witnessed the execution thereof.

SWORN to before me this 24th day of April, 1968.

[Signature] (L.S.)
Notary Public for Florida

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES FEB. 9, 1971
NOTARY PUBLIC STATE OF FLORIDA AT LARGE

DATE	APPROVED	RECORD	RECORD	RECORD
7-24-87	7-24-87	7-24-87	7-24-87	7-24-87

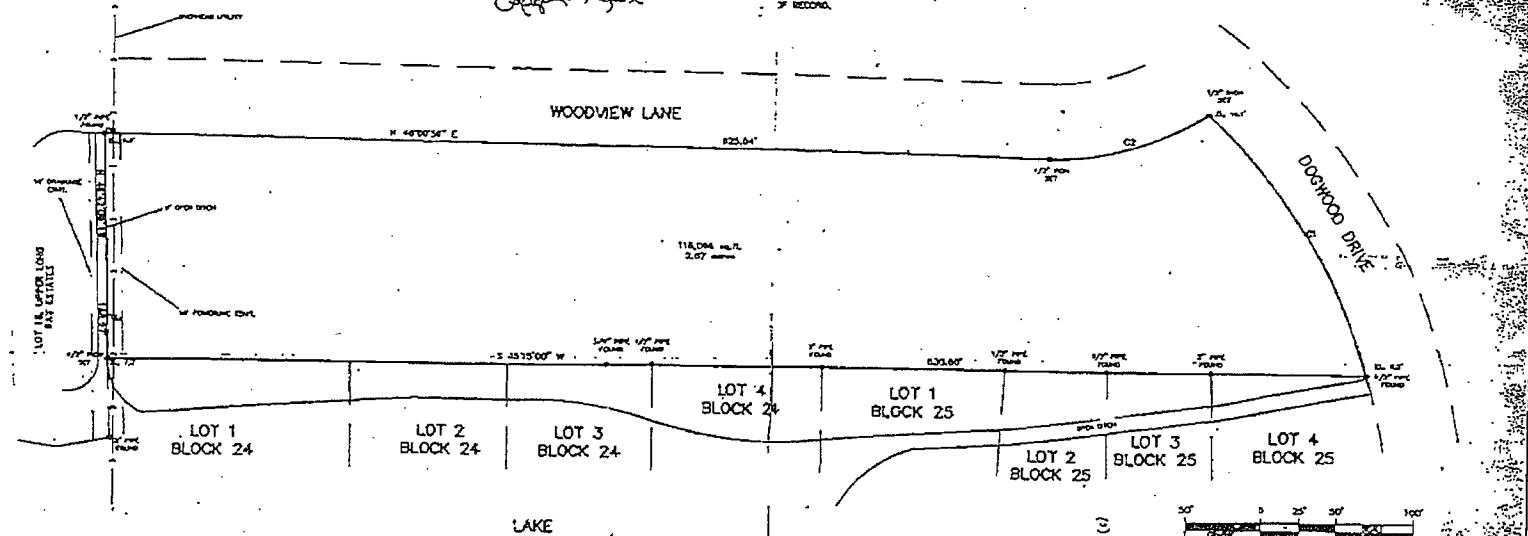
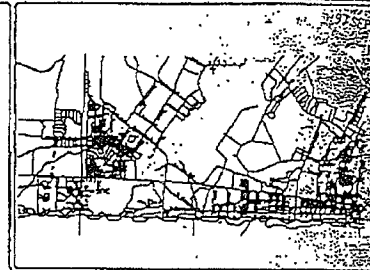
CERTIFICATE OF APPROVAL FOR RECORDING
 I hereby certify that the subdivision plat shown here has been found to comply with the Subdivision Regulations for Horry County, South Carolina, with the exception of such variances, if any, on the Plat and that it has been approved for recording in the office of the Clerk of Court.

DATE _____
 CHAIRMAN PLANNING COMMISSION

CERTIFICATE OF OWNERSHIP AND DEDICATION
 I (we) hereby certify that I (we) (we are) the owner(s) of the property shown and described herein and that I (we) hereby adopt this plan of subdivision with my (our) live consent, establish the minimum building restrictions, lines, and standards of streets, alleys, walks, parks and other open space to public or private use as noted.

DATE 12-12-87
 David Meese
 Owners

3
 THIS PROPERTY IS LOCATED IN FLOOD ZONE AE (EL. 14) ACCORDING TO FLOOD INS. 400010009 L, DATED 8-30-86.
 ACTUALLY IF ANY ARE NOT SHOWN ON THIS MAP.
 LOT 1, A MAP OF UPPER LONG BAY BY ROBERT L. BELLAMY & ASSOCIATES, INC. PREPARED FOR THE LENS FAMILY DATED 12-27-87 AND RECORDED BY THE CLERK OF COURT FOR HORRY COUNTY IN PLAT BOOK 108 AT PAGE 324.
 LOT 2, A MAP OF BLOCKS 24 & 25, LONG BAY ESTATES BY ROBERT L. BELLAMY DATED 7-9-84 AND RECORDED BY THE CLERK OF COURT FOR HORRY COUNTY IN PLAT BOOK 21 AT PAGE 118.
 LOT 3, A MAP OF BLOCKS 30, 32 & 34, LONG BAY ESTATES BY ROBERT L. BELLAMY, C.S. DATED 12-27-86 AND RECORDED BY THE CLERK OF COURT FOR HORRY COUNTY IN PLAT BOOK 33 AT PAGE 75-A.
 MS 100-14-05-001
 THIS PROPERTY IS ZONED R-7.
 EASEMENTS:
 20' FRONT
 10' SIDE
 15' REAR
 THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.



I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE ORIGINAL SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE UNIFORM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN AS SHOWN.

Michael S. Culler, Jr.
 MICHAEL S. CULLER, JR., P.L.S. NO. 5210

APPROVED FOR RECORDING

David Meese
 12-12-87

EXHIBIT
 PLF 12
 4-12-1

ORIGINAL SURVEY
 OF
 2.67 ACRES, LOCATED IN LONG BAY ESTATES,
 SOCASTEE TOWNSHIP, HORRY COUNTY,
 SOUTH CAROLINA

PREPARED FOR
DAVID MEESE & LEIGH A. MEESE
CULLER LAND SURVEYING CO., INC.

(803) 238-2133
 P.O. BOX 14327
 SURFSIDE BEACH S.C. 29578

DATE 7-24-87 SCALE 1"=50' PL. 05-29, PC 28-29 DMC 2480

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS

GENE F. LEWIS and CARMEN F. WARD, as Co-Executrices and Co-Trustees
Under the Last Will and Testament of Frederick W. Lewis, Deceased,

PLAINTIFFS

vs.

ADAMS, LEROY
BEATY, DUDLEY C.
BEEBLE, PETER and JEAN B.
BELL, LLOYD A., JR.
BELL, ROBERT B.
BERNHARD, HARRY
BESS, LOUISE L.
BISSING, PAUL G. and JOHNNIE N.
BLACKWELL, WILLIAM H.
BRANTON, JOHN A. and RUTH P.
BRANTON, NORMA N.
BROOKSHIRE, J. C.
BRYANT, PEGGY BELL
BUSTLE, JAMES A. and PHYLLIS J.
BUTLER, JAMES W. and BETTY F.
CANNON, MARION C.
CARSON, ELEANOR BELL
CASALINA CORPORATION
CHINNES, LLOYD S. and
PATRICIA P.
COOPER, SIDNEY E. and MARY E.
CRAVEN, MALCOLM H. and MARY D.
CURLEE, HENRY C. and SUE N.
DAVIS, MARY ELIZABETH T.
DUBOSE, DONALD S.
DUSENBURY, FRANCIS C.
FLOYD, ANN BUSSEY
FLOYD, CHARLES D. and CAROLYN A.
FOGLE, RUBY HARRINGTON
FREDERICK, JOHN and OLLIE H.
GARRELL, C. D., JR.
GILBERT, HARRY M.
GINDER, JOHN W. and BETTY J.
GODFREY, JANE J.
HANNA, JANESE B.
HERSHBERGER, RICHARD E. and
PAULINE P.

HINSON, ANNE MCQUEEN
HOLTZSCHEITER, EARL W. and
MARY LOIS M.
HOPPER, J. S. and DORIS
HYMAN, DONALD E. and MARY J.
JOHNSTON, H. DON
JOHNSTON, JERRY A.
JONES, W. E. and ANN L.
KADISON, MARY M.
KATES, GUY S., JR. and MARJORIE C.
KIDE, LANNEAU D.
LIVINGSTON, ROGER L. and DIANA S.
LONG, JUANITA
MARTIN, DIANE S.
MULLINIX, TED
NEELY, CLYDE C. and BETTY SUE
PALMER, R. A.
PERRY, PHILLIP E.
RANKIN, DOROTHY S.
RANKIN, O. A.
RAY, ALLEN L.
ROBERTS, GERALD D.
ROLFE, IRENE A.
ROYALS, DAGGETT O. and ELEANOR D.
SADLER, BETTY D.
SIMPSON, R. W., JR. and MARY H.
SISSLER, JOSEPH E.
SOUTHERN PROPERTIES CORP., INC.
SWANSON, WILLIAM S. and FRANCES T.
TATARSKI, LOUIS and PEGGY A.
THAMES, MRS. PRESTON B., III
TODD, WILLIAM J.
UPPER, EDWARD R.
VEREEN, ARTHUR B. and LEONA D.
WALKER, NELSON R. and SADIE M.
WALSH, JOHN J., JR.
WARD, JESSE J. and HELEN M.
WOOD, TAYLOR and JESSIE MAE
ZACHARY, JACK T. and GERTRUDE W.

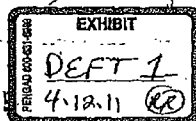
individually and as representatives of all lot owners in Long Bay
Estates Section and also all other persons unknown, claiming any
right, title, estate, interest in or lien upon the real estate
described in the complaint herein,

DEFENDANTS.

DECREE

and

37417



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) LP #23428

GENE F. LEWIS and CARMEN F. WARD, as Co-Executrices and Co-Trustees
Under the Last Will and Testament of Frederick W. Lewis, Deceased,

PLAINTIFFS

v.

Adams, Leroy
Beaty, Dudley C.
Beeble, Peter and Jean B.
Bell, Lloyd A., Jr.
Bell, Robert B.
Bernhard, Harry
Bess, Louise L.
Bissing, Paul G. & Johnnie N.
Blackwell, William H.
Branton, John A. & Ruth P.
Branton, Norma M.
Brookshire, J. C.
Bryant, Peggy Bell
Bustle, James A. and Phyllis J.
Butler, James W. & Betty D.
Cannon, Marion C.
Carson, Eleanor Bell
Casalina Corporation
Chinnes, Lloyd S. & Patricia P.
Cooper, Sidney E. and Mary F.
Craven, Malcolm H. and Mary D.
Curlee, Henry C. & Sue N.
Davis, Mary Elizabeth T.
Dubose, Donald S.
Dusenberry, Francis C.
Floyd, Ann Bussey
Floyd, Charles D. & Carolyn A.
Fogle, Ruby Harrington
Frederick, John & Ollie H.
Garrell, C. D., Jr.
Gilbert, Harry M.
Ginder, John W. & Betty J.
Godfrey, Jane J.
Hanna, Janese B.
Hershberger, Richard E. & Pauline P.
Hinson, Anne McQueen
Holtzschelter, Earl W. & Mary Lois M.
Hopper, J. S. & Doris
Hyman, Donald E. & Mary J.

Johnston, H. Don
Johnston, Jerry A.
Jones, W. E. & Ann L.
Kadison, Mary M.
Kates, Guy S., Jr. & Marjorie C.
Lide, Lanneau D.
Livingston, Roger L. & Diana S.
Long, Juanita C.
Martin, Diane S.
Mullinix, Ted
Neely, Clyde C. & Betty Sue
Palmer, R. A.
Perry, Phillip E.
Rankin, Dorothy S.
Rankin, O. A.
Ray, Allen L.
Roberts, Gerald D.
Rolfe, Irene A.
Royals, Daggett O. & Eleanor D.
Sadler, Betty D.
Simpson, R. W., Jr. & Mary H.
Sissler, Joseph E.
Southern Properties Corp., Inc.
Swanson, William S. & Frances T.
Tatarski, Louis & Peggy A.
Thames, Mrs. Preston B., III
Todd, William J.
Upper, Edward R.
Vereen, Arthur B. & Leona O.
Walker, Nelson R. & Sadie M.
Walsh, John J., Jr.
Ward, Jesse J. & Helen M.
Wood, Taylor & Jessie Mae
Zachary, Jack T. & Gertrude W.

individually and as representatives of all lot owners in Long Bay
Estates and also all other persons unknown, claiming any right,
title, estate, interest in or lien upon the real estate described
in the complaint herein; ALSO, all other persons unknown, claiming
any right, title, estate, interest in or lien upon the real estate
described in the Answer, Counterclaim and Cross-Complaint herein-
after set out,

DEFENDANTS and, except for
Casalina Corporation and Norma M.
Branton, CROSS-DEFENDANTS.

DECREE

37417

This action by the plaintiffs above named, and the cross-action by Casalina Corporation, being in the nature of suits to quiet title involves two adjoining properties lying between U. S. Highway no. 17 and the Atlantic Ocean in Horry County, South Carolina.

Under date of November 9, 1972 a general Order of Reference was issued to the Master for Horry County who has submitted his Report dated November 15, 1972, which was filed on November 21, 1972, and according to affidavit of plaintiffs' counsel no exceptions thereto have been filed.

In reporting his findings of fact and conclusions of law the Master recommended that a Decree be issued incorporating the findings and conclusions as to the property of plaintiffs, identified in the report as LEWIS ESTATE LANDS, and that a Decree also be issued as to the lands of the cross-complainant Casalina Corporation, which property was referred to in the Master's Report as LANDS OF CASALINA CORPORATION.

3
Amf It is, therefore, on motion of F. G. Burroughs, Attorney appearing for the plaintiffs, and on motion of John E. Willard, Attorney for the cross-complainants, ORDERED that the Report of Honorable Winston W. Vaught, as Master for Horry County, dated November 15, 1972, is confirmed, made the judgment of this Court, and in furtherance thereof, it is ORDERED, ADJUDGED AND DECREED:

AS TO LEWIS ESTATE LANDS

FIRST: That the area shown as YE OLDE KINGS ROAD within the boundaries of the Lewis Estate lands on the plat recorded in Plat Book 25 at page 22, Clerk's office for Horry County, South Carolina, has never been opened for travel; has not been used for purposes of a road or street; has never been dedicated or accepted as a public road or street; is not subject to any private easement in favor of the defendants, or any of them; and that title thereto is vested in the plaintiffs free and clear of any right, title, estate, or interest in said area by the defendants or by any other persons, subject only to the restriction as to use on those portions of the area shown as YE OLDE KINGS ROAD lying within Blocks 30, 32 and 34 covered by the next portion of this order. It appears that neither Lots 3 nor 4 of Block 27 have been sold and that they are still owned by the plaintiffs. That portion of YE OLDE KINGS ROAD lying to the northeast of Dogwood Drive and abutting on Lots 3 and 4 of Block 27 is not restricted. See the FOURTH section of this Decree below.

SECOND: That Blocks 30, 32 and 34 as shown on "Exhibit A" and as shown on the Bellamy map recorded in Book 53 at page 79-A are declared to be residential in character and subject to restrictions of the same type and character as those stated by the declaration recorded in Plat Book 25 at page 22 as being applicable to Blocks 1-27, inclusive.

In like manner the remaining portions of "old" Blocks 28 and 29, that is to say the area lying between the rear of Blocks 24 and 25 and the southeasternmost "paved street" are subject to such residential restrictions, but with right of revision of the lot arrangement or for combination with abutting portions of lots in Blocks 24 and 25. The restrictions uniformly used in this area and the declaration recorded in 25 at 22 reserved to grantor the right to change boundary lines and building lines as to any unsold lots in any event.

The above areas have been indicated as "residential" and as "residential (with right of revision)" on the copy of the map attached to this Decree. Another copy of the map is being signed by me for purposes of identification and shall be recorded in a plat book in the Office of the Clerk of Court for Horry County.

THIRD: The sixty-foot PAVED STREET lying to the northwest of and abutting on Blocks 30, 32 and 34 and the fifty-foot PAVED STREET lying to the southeast of said Blocks, which streets extend in a general southwestwardly direction from Dogwood Drive are declared to be public streets and each has been designated "public street" on the copy of the attached map.

FOURTH: The remaining lands in the portion of the Lewis Estate property under consideration here are free of any restrictions or plan of development and are indicated as "unrestricted" on the attached map.

FIFTH: DOGWOOD DRIVE as shown on the attached map is a public street and has been so indicated thereon.

Handwritten signature

37417

AS TO CASALINA CORPORATION

FIRST: Casalina Corporation's cross-complaint should be dismissed as to Leroy Adams (for the reason stated in the Master's Report).

SECOND: Casalina Corporation is vested of record with title to the property described below:

All grantor's (Greenvale Hills Corporation's) right, title and interest in and to the following land, as described in deed to grantor recorded in Deed Book 129, page 143:

All that certain tract, piece or parcel of land situate and being in Socastee Township, Horry County, being more particularly described as follows:

Beginning at a concrete monument in the southeastern edge of U. S. Highway #17 at a distance of 524 feet southwest of the center of a road leading into the Long Bay Estates Property and running thence, with the edge of said highway South 46° 28' West 890 feet to a corner in highway right-of-way line, thence South 43° 32' East 2460 feet, more or less, to the high water mark of the Atlantic Ocean, thence with the high water mark of the Atlantic Ocean North 44° 41' East 996 feet to a corner in the high water mark of said ocean, thence North 46° 2' West 43 feet, more or less, to a concrete monument, thence continuing North 46° 2' West 2386 feet to the point of beginning at U. S. Highway #17.

The above described tract of land contains 52.9 acres.

Together with all the right, title and interest of the grantor in the strand of the Atlantic Ocean lying in front of and adjacent to said property and all the right, title and interest of the grantor to the hereinabove mentioned highway running adjacent to said property, to the center line of said highway.

Grantor's right, title and interest being in that portion of Long Bay Estates (as shown on map recorded in Plat Book 25, page 22) embraced within the above description, less portions thereof heretofore conveyed by grantor in deeds (listed at this point in the description in the deed by Greenvale Hills Corporation to Casalina Corporation, each of which deeds conveyed lots in the subdivided areas shown in Plat Book 25, page 22).

And being in particular:

Undivided portions of said land
(including landings and utility lots), plus

The following lots shown in said
map (Plat Book 25, page 22) and in other
maps as indicated:

(Various lots and blocks which
Casalina Corporation has subsequently sold)

Block 19, Lots 1, 2 and 3.

Block 20, Lots 1, 2 and 3.

PLUS, all land and interests therein
acquired by grantor by said deed recorded in
Deed Book 129, page 143, which may be mis-
takenly excepted therefrom above by reason
of typographical or other error;

PLUS, all grantor's rights (including,
but not limited to, reversionary rights, rights
of re-entry, and rights to enforce restrictive
and other covenants and conditions) contained
in any conveyance heretofore made by grantor or
otherwise applicable to such land and enforce-
able by grantor or its successors and assigns;

PLUS, the right and power to make and
execute any correction deeds that might appear
in the future to be appropriate with respect to
any conveyance heretofore made by grantor as
above listed;

PLUS, any and all other rights and
interests in the land so acquired by the
grantor, the same as if the grantee herein
(Casalina Corporation) had been the grantee
in the conveyance to the grantor.

TOGETHER with all and singular the
rights, members, hereditaments and appurte-
nances to the same premises belonging, or in
anywise incident or appertaining thereto.

THIRD: Casalina Corporation's title is unaffected by the
depiction on said plat of "Ye Olde Kings Road," which is hereby
declared to be non-existent.

FOURTH: Blocks 19 and 20 shall be subject to the Plat
Book 25, page 22, restrictions, subject, however, to the right
reserved in these restrictions to change building and boundary
lines. The utility lot, the boat and community landings, and that
portion of the park owned by Casalina Corporation are subject to
such servitudes in favor of cross-defendants and their successors

Page Seven _____

37417

in title as exist under the laws of this State in favor of purchasers of lots in platted subdivisions.

FIFTH: Casalina Corporation has the right to devote its property embraced on said plat and abutting U. S. Highway 17, to a depth of 350 feet eastward from the right-of-way, to any lawful use, residential or commercial.

SIXTH: In any future sales, gifts, or leases by Casalina Corporation of any of its other property embraced on said plat, it shall restrict the same to residential use, single or multiple, but without regard to the Plat Book 25, page 22, restrictions and with full freedom to subdivide such other property (with regard to streets, building lines, lot sizes, and water and sewer facilities) as it sees fit--subject, of course, to sovereign rights, if any, to marsh, lake, and other water bodies or courses, and to land-and/or-water use laws, ordinances, and regulations now or hereafter applicable and enforceable by governmental authorities.

5
my

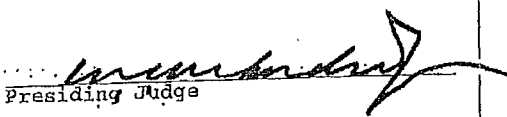
37417

Page Eight

AS TO BOTH ACTIONS

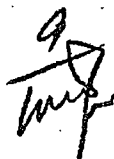
The interests of any unknown claimants who are under any legal disability have been adequately represented by their Guardian ad Litem and by the consenting cross-defendants as a class whose best interests coincide with the best interests of any such unknown claimants; the foregoing findings and conclusions are to the best interests of such possible claimants; and such provisions should be decreed to be binding on them.

No costs shall be taxed by or against any of the parties to this action.

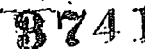
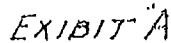

Presiding Judge

Conway, S. C.

December 11th 1972..



37417



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2004-CP-26-2075

John Musick,

Plaintiff,

vs.

Thomas L. Dicks and
Robert E. Dicks, Jr.,

Defendant.

**PLAINTIFF'S RESPONSES TO
REQUESTS FOR ADMISSIONS**

TO: Demetri K. Koutrakos, Esquire, Attorney for the Defendants.

1. Admit that the 2000 Order is not in the chain of title to Defendants' Property.

Response:

Admit. However, upon information and belief, Defendants had actual notice.

2. Admit that the 1972 Order is not indexed in the Defendant index to judgments at the Horry County Clerk of Court under the name of the person(s) or entity(ies) who owned Defendants' Property during the pendency of the lawsuit from which the 1972 Order derives.

Response:

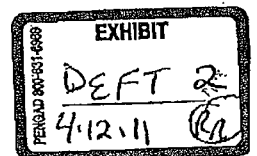
Plaintiff does not have sufficient information in which to admit or deny such allegations at this time.

3. Admit that the 1972 Order on page 7 states that "the remaining portions of 'old' Blocks 28 and 29" are "subject to such residential restrictions, but with right of revision of the lot arrangement or for combination with abutting portions of lots in Blocks 24 and 25.

Response:

Plaintiff craves reference to the 1972 Order in its entirety.

4. Admit that the 1972 Order does not provide that Blocks 28 and 29 cannot be subdivided.



Response:

Plaintiff craves reference to the 1972 Order in its entirety.

5. Admit that the "general plan or restrictions" referred to in paragraph 5 of your Complaint that you allege was recorded in Plat Book 25 at Page 22 and recorded May 5, 1958, do not state that no block shall be subdivided.

Response:

The allegations contained in Paragraph 5 of the Complaint are gleaned from all provisions of the recordings. Further, Defendants had actual notice of same.

6. Admit that the plat recorded in Plat Book 25 at Page 22 shows that Block 29 contains three lots.

Response:

Admit

7. Admit that the plat recorded in Plat Book 25 at Page 22 shows that Block 28 contains four lots.

Response:

Admit.

8. Admit that the plat recorded in Plat Book 25 at Page 22 shows that Blocks 28 and 29 contain a total of seven lots.

Response:

Admit.



Thomas C. Brittain
Natasha M. Hanna
HEARN, BRITTAIN & MARTIN, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
Telephone: (843) 449-8562

Dated: July 14, 2004

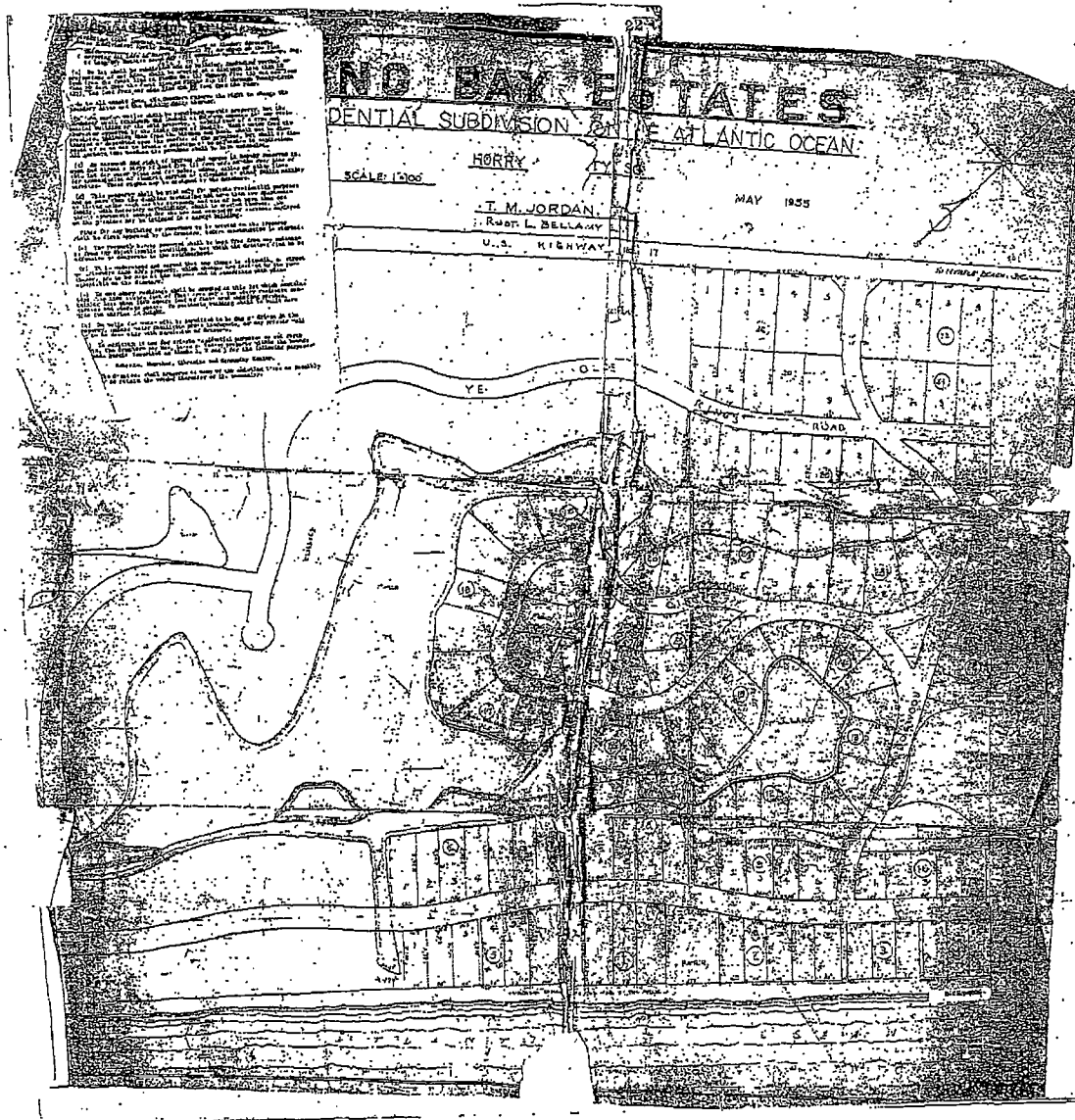
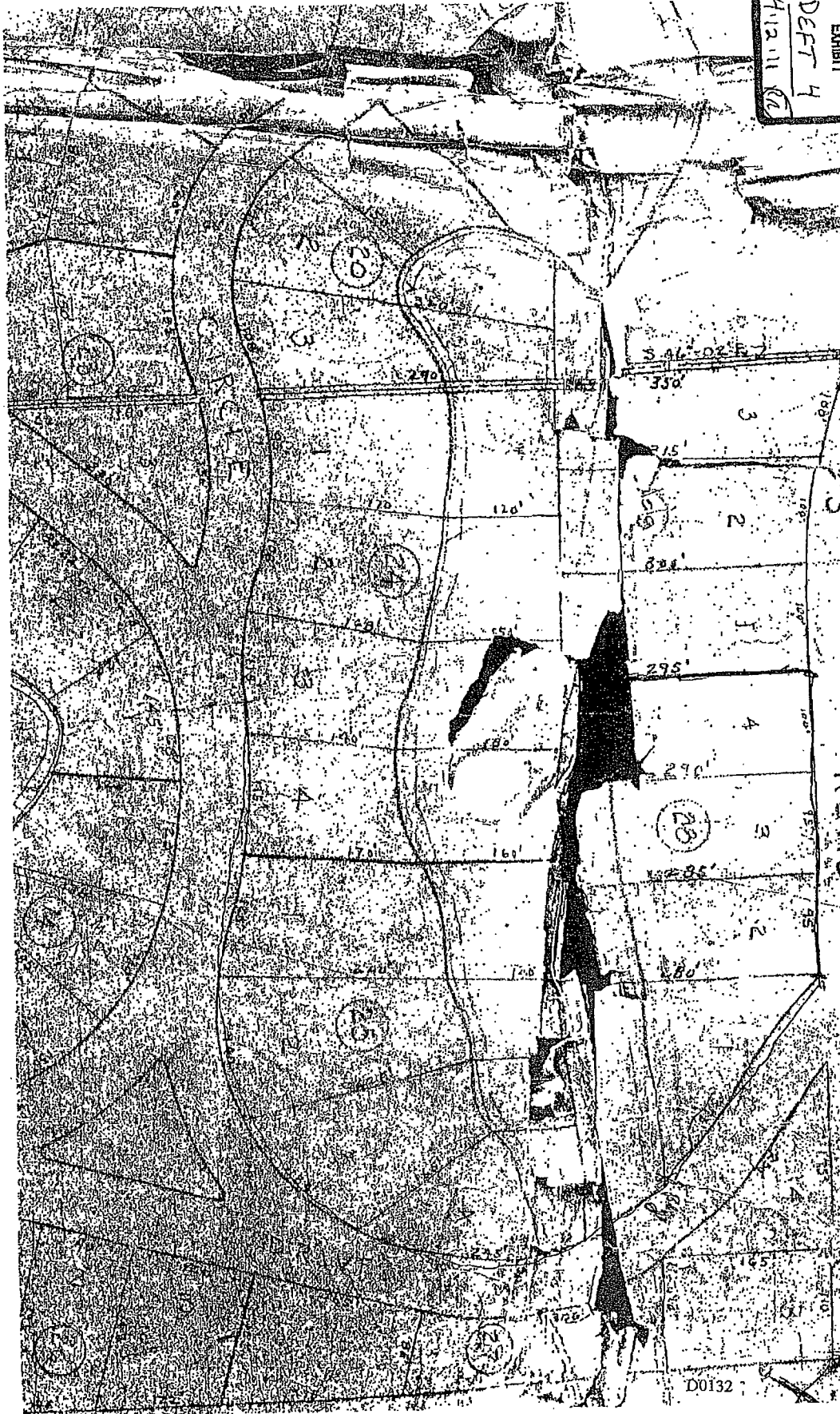
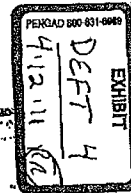


EXHIBIT
DEFT 3
4.12.11 R2



6495/3

FILED
HORRY COUNTY

97 SEP -4 AM 11:43

R.M.C.

Prepared By:
Law Offices of
Dusenbury, Hendrix & Little
602 27th Avenue North
Myrtle Beach, SC 29577
(803) 448-7137

(space above this line for Recorder's use)

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF HORRY

(Joint Tenancy)

KNOW ALL MEN BY THESE PRESENTS, that Carmen F. Ward, Trustee, Richard C. Lewis, Jr., Raymond H. Lewis, Peter S. Lewis, Carol L. McKellar Levin (formerly known as Carol L. McKellar) and Marica G. Whitaker, hereinafter called Grantors in consideration of One Hundred Forty-Five and no/100 (\$145,000.00) Dollars to the Grantors in hand paid at and before the sealing of these presents by the Grantees hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the following named Grantees, to wit:

DAVID W. MEESE, JR. and LEIGH ANMORE MEESE

as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns forever, the following described property.

ALL AND SINGULAR, that certain place, parcel or tract of land lying situate and being in Long Bay Estates, Socastee Township, Horry County, South Carolina containing 2.67 acres (more or less) as depicted on that certain survey dated July 24, 1997 prepared for David Meese and Leigh A. Meese by Culler Land Surveying Co., Inc. which was recorded on Sept 4, 1997 in the Office of the RMC for Horry County in Plat Book 149, at Page 231, reference to which is craved as forming a part of these presents.

DERIVATION: This being a portion of the property conveyed to Carmen F. Ward, Trustee, under the Last Will and Testament of Frederick W. Lewis, exemplification of which has been duly filed in the Probate Court for Horry County, SC, in Cabinet 1, Drawer 3, Package 46. Also, this being a portion of the property conveyed to Maxion G. Whitaker by deed from Carmen F. Ward, Trustee, recorded August 31, 1983, in Deed Book 817, at Page 405, records of Horry County. Further, this being a portion of the property conveyed to Richard C. Lewis, Jr., Raymond H. Lewis, Carol L. McKellar and Peter S. Lewis by deed from Carmen F. Ward, Trustee, recorded August 31, 1983, in Deed Book 827, at Page 397, records of Horry County.

EXEMPT
YES
NO

STATE 377.00
COUNTY 159.50

EXHIBIT
DEFT 5
411211

BOOK 1971 PAGE 134

131

This conveyance is made subject to all easements, rights of way and conditions of record.

Together with all and singular the rights, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns forever.

And, the Grantors do hereby bind the Grantors and the Grantors' heirs and personal representatives to warrant and forever defend all and singular said premises unto the Grantees as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns forever, against the grantors and the Grantors' heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part hereof.

WITNESS the grantors' hands and seals this 2 day of September, 1997.

Cecilia Mary
(1st witness sign here)

Rose B.
(Notary sign here).

NOTARY PUBLIC
STATE OF NEW YORK

GRANTORS:

Carmen F. Ward, Trustee (LS)
Carmen F. Ward, Trustee

Richard E. Sears, Jr. by
Ernest L. Ward

Richard C. Lewis, Jr., by Carmen F. Ward, under Power of Attorney recorded in Dead Book 817, Page 3 on 8/31/83, records of Horry County

Raymond H. Lewis, by
Carmen F. Ward, (MS)
Raymond H. Lewis, by Carmen F. Ward,
under Power of Attorney,
recorded in Dead Book 817, Page 38
on 8/31/83, records of Henry County

Peter S. Lewis by Carmen F. Ward (LS)
under Power of Attorney, recorded in
Deed Book 81, Page 381 on 8/31/83,
records of Horry County



Carol L. McKellar, Levin (1/k/a)
Carol L. McKellar, by Carmen F. Ward, under Power of Attorney, recorded in Deed Book 817, Page 376 on 8/31/83, records of Horry County
Marion G. Whitaker, by Carmen F. Ward, under Power of Attorney, recorded in Deed Book 817, Page 392 on 8/31/83, records of Horry County

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)

ACKNOWLEDGEMENT
(pursuant to S.C. Code Section 30-5-30(a))

I, the undersigned Notary Public for New Mexico, do hereby certify that Carmen F. Ward, Trustee, and Carmen F. Ward, attorney-in-fact for Richard C. Lewis, Jr., Raymond H. Lewis, Peter S. Lewis, Carol L. McKellar, Levin (formerly known as Carol L. McKellar) and Marion G. Whitaker, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of September, 1997.

[Signature] (Seal)
Notary Public for New Mexico

My Commission Expires: 9-16-2000

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property (2.67 acre tract) located at Long Bay Estates, Myrtle Beach, SC 29577, bearing Horry County TMS# 186-14-05-001, was transferred by Carmen E. Ward, Trustee, and Carmen E. Ward, attorney-in-fact for Richard C. Lewis, Raymond H. Lewis, Peter S. Lewis, Carl L. McKillar, and Marion G. Whitaker, Grantors, to David W. Meese, Jr. and Leigh Ann Meese, Grantees, on September 3, 1997.

The transaction was (check one):

☒ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$145,000.00.

☐ not an arm's length real property transaction and the fair market value of the property is \$ N/A.

The above transaction is not exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq.: Not exempt.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantees.

I further understand that a person required to furnish this affidavit who wilfully furnished a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Jay Dusenbury
Jay Dusenbury

SWORN to before me this
22 day of September, 1997.

James A. Dusenbury (L.S.)
Notary Public for South Carolina
My Commission Expires: 4/2000

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on (and) tenement, or realty before the transfer and remaining on it after the transfer.

32306-fig 4/20/41

Prepared By:
Law Offices of
Dusenbury & Clarkson, PA
602 27th Avenue North
Myrtle Beach, SC 29577
(843) 448-7137

RECORDED
MAY 19, 1997

203 MAY 19, 1997

RECORDS OF DEEDS

Grantee's Address: 3925 Little River Road #5
Myrtle Beach, SC 29577

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS, that David W. Meese, Jr. and Leigh Ammons Meese, hereinafter called Grantors, in consideration of One Hundred Seventy-Five Thousand and no/100 (\$175,000.00) Dollars, to the Grantors in hand paid at and before the sealing of these presents by Thomas L. Dicks, hereinafter called Grantee, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the Grantee, the following described property.

ALL AND SINGULAR, that certain piece, parcel or tract of land lying situate and being in Long Bay Estates, Socastee Township, Horry County, South Carolina containing 2.67 acres (more or less) as depicted on that certain survey dated July 24, 1997 prepared for David Meese and Leigh A. Meese by Culler Land Surveying Co., Inc. which was recorded on September 4, 1997 in the Office of the R.O.D. for Horry County in Plat Book 149, at Page 232, reference to which is craved as forming a part of these presents. Horry Co. TMS# 186-14-05-001

DERIVATION: This being the identical property conveyed to David W. Meese, Jr. and Leigh Ammons Meese, by deed of Carmen F. Ward, Trustee, Richard C. Lewis, Jr., Raymond H. Lewis, Peter S. Lewis, Carol L. McKellar Levin, (f/k/a Carol L. McKellar) and Marion G. Whitaker, which was executed September 2, 1997 and recorded September 4, 1997 in Deed Book 1971, at Page 134, records of Horry County.

This conveyance is made subject to all easements, rights of way and conditions of record.

STATE 45500 COUNTY 192.50

EXEMPT YES NO

DEED
2597 0296

186-14-05-001

D0163

05/20/03 SEP

EXHIBIT
DEFT 6
4.12.11 (20)

K
296

Together with all and singular the rights, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns forever.

And, the Grantors do hereby bind the Grantors and the Grantors' heirs and personal representatives to warrant and forever defend all and singular said premises unto the Grantees as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns forever, against the grantors and the Grantors' heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part hereof.

WITNESS the grantors' hands and seals this 14th day of May, 2003.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
(1st witness sign here)

David W. Meese, Jr. (LS)
David W. Meese, Jr.

[Signature]
(Notary sign here)

[Signature] (LS)
Leigh Annons Meese

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGMENT
(pursuant to S.C. Code Section
30-5-30(c))

I, the undersigned Notary Public for South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14th day of May, 2003.

[Signature] (Seal)
Notary Public for South Carolina
My Commission Expires: 5/25/2005

DEED TO REAL ESTATE

2003 MAY 19 PM 12:43

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS,
That I, Thomas L. Dicks, in the State aforesaid for and in consideration of the sum of EIGHTY
SEVEN THOUSAND FIVE HUNDRED DOLLARS and 00/100 Dollars (\$87,500.00) to me paid
by Robert E. Dicks, Jr. and Amanda Y. Dicks, 127 Green Lake Dr. in the City of SC 29572
in the State aforesaid, (Receipt whereof is hereby acknowledged) have granted, bargained, sold and
released; and by these presents do grant, bargain, sell and release unto the said Robert E. Dicks, Jr.
and Amanda Y. Dicks, as joint tenants with the right of survivorship, and not as tenants in common,
their Heirs and Assigns the following described property to wit:

See attached "Exhibit A" for legal description.

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 premises before mentioned unto the said Robert E.
Dicks, Jr. and Amanda Y. Dicks, their Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever
defend all and singular the said premises unto the said Robert E. Dicks, Jr. and Amanda Y. Dicks,
their Heirs and Assigns, against me and my Heirs, and all persons whomsoever lawfully claiming,
or to claim the same or any part thereof.

WITNESS the execution hereof by grantor(s) this 15th day of May, in the year of our Lord Two
Thousand Three and in the two hundred and twenty-seventh year of the Sovereignty and
Independence of the United States of America.

[Signature]
Witness
[Signature]
Notary

Thomas L. Dicks
Thomas L. Dicks

STATE 207.50 COUNTY 96.25
EXEMPT YES ☒ NO
ASSESSOR _____

DEED
2597 0299

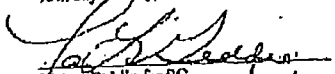
D0165

EXHIBIT
DEED
4.12.11 (R)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

PERSONALLY appeared before me the undersigned witness who after being duly sworn says that (s)he saw the within named grantor(s) execute the foregoing instrument and that (s)he with the other signed witness witnessed the execution thereof.

SWORN to before me this
15th day of May, 2003


Notary Public for SC

My Commission Expires: 3/14/2005

(SEAL)


Same witness sign again

D0166

EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or tract of land lying situate and being in Long Bay Estates, Socastee Township, Horry County, South Carolina consisting of Lots 1, 2 & 3 as shown on that certain survey dated April 25, 2003 prepared for Thomas L. Dicks and Robert E. Dicks, Jr. by Robert L. Bellamy & Associates, Inc. entitled "Resubdivision of Blocks 28 & 29 at Long Bay Estates Socastee Township, Horry County, South Carolina. Said plat was recorded on May ____, 2003; in the Office of the Register of Deeds for Horry County in Plat Book ____, at Page ____, reference to which is incorporated herein and made a part hereof by reference.

This conveyance is made subject to all easements, rights of way and conditions of record.

Being the same lands and premises as were conveyed to Grantor by Deed from David W. Meese, Jr. and Leigh Asmmons Meese dated May 13, 2003 and recorded in Deed Book ____ at page ____ of the public records of Horry County, South Carolina.

TMS: _____

BOOK 186-14-05-010, 011, 012
NEW PAGE 186-14-05-001
SPLIT 186-14-05-001
Lay Blk Pl: 01
5/24/03

D0167

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at Lots 1, 2 & 3 Blocks 28 & 29, Long Bay Estates,, bearing HORRY County Tax Map Number _____, was transferred by Thomas L. Dicks, to Robert E. Dicks, Jr. and Amanda Y. Dicks, on 05/15/03.

The transaction was (Check One):

XX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$87,500.00

 not an arm's length real property transaction and the fair market value of the property is \$0.00

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et seq. because the deed is N/A.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as grantee.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Robert E. Dicks, Jr.
Robert E. Dicks, Jr.

Amanda Y. Dicks
Amanda Y. Dicks

SWORN to before me this 15th
day of May, 2003

Ray D. Leddie
NOTARY PUBLIC for

My Commission Expires: 3/19/2005

D0168

302

Plat

COUNTY OF HORRY
STATE OF SOUTH CAROLINA

LINE	LENGTH	BEARING
1-1	40.86'	S 46°34'24" W
1-2	46.57'	S 57°04'07" W
1-3	34.02'	S 57°37'24" W
1-4	15.05'	S 37°18'16" W
1-5	21.31'	S 50°31'18" W
1-6	23.78'	S 37°54'28" W
1-7	32.28'	S 7°03'39" W
1-8	45.85'	S 3°03'09" W
1-9	37.80'	S 47°09'34" W
1-10	29.24'	S 37°04'37" W
1-11	42.14'	S 08°24'44" W
1-12	39.92'	S 10°14'31" E
1-13	14.50'	S 50°18'09" W
1-14	58.29'	S 50°40'24" W
1-15	27.61'	S 41°18'31" W
1-16	58.12'	S 11°20'42" W
1-17	24.81'	S 85°44'40" W
1-18	30.77'	S 08°18'30" W
1-19	30.32'	S 84°42'24" W
1-20	27.05'	N 22°45'41" W
1-21	28.21'	S 31°00'02" W
1-22	43.80'	S 18°46'21" E
1-23	121.82'	S 47°52'24" W

LOT	UPLAND AREA	WETLAND AREA	TOTAL AREA
LOT 1	7,810 sq. ft.	1,871 sq. ft.	9,681 sq. ft.
LOT 2	0.18 acres	0.04 acres	0.22 acres
LOT 3	7,812 sq. ft.	1,421 sq. ft.	9,233 sq. ft.
LOT 4	0.18 acres	0.03 acres	0.21 acres
LOT 5	8,420 sq. ft.	3,742 sq. ft.	12,162 sq. ft.
LOT 6	0.18 acres	0.08 acres	0.26 acres
LOT 7	8,478 sq. ft.	2,293 sq. ft.	10,771 sq. ft.
LOT 8	0.15 acres	0.06 acres	0.21 acres
LOT 9	1,018 sq. ft.	4,184 sq. ft.	5,202 sq. ft.
LOT 10	0.15 acres	0.10 acres	0.25 acres
LOT 11	8,814 sq. ft.	2,702 sq. ft.	11,516 sq. ft.
LOT 12	0.15 acres	0.18 acres	0.33 acres
LOT 13	0.20 acres	45,208 sq. ft.	54,028 sq. ft.
LOT 14	0.20 acres	1,04 acres	1,24 acres
TOTAL	49,735 sq. ft.	58,512 sq. ft.	108,247 sq. ft.

SURVEYED:
THIS PARCEL IS SUBJECT TO ALL EASEMENTS & RESTRICTIONS OF RECORD.
THIS MAP REFLECTS A RESURVEY OF TAX PARCEL NO. 180-14-09-001
THIS PROPERTY IS LOCATED IN FLOOD ZONE AE (EL. 14), COMMUNITY NO. 450104, FLOOD MAP NO. 450104B, DATED 08-23-08 AND IS SUBJECT TO VERIFICATION BY THE COUNTY FLOOD OFFICER.

LEGEND
IPF - IRON PIPE FOUND
IPS - IRON PIPE SET
PP - POWER POLE

REFERENCE:
1. WETLANDS PLAT OF 2.67 ACRES IN LONG BAY ESTATES BY COLLEEN LAND SURVEYING CO., INC. DATED DECEMBER 19, 2002

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH OUR FREE CONSENT, ESTABLISH THE WOODVIEW BUILDING RESTRICTION LINES, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, AND OTHER OPEN SPACE TO PUBLIC OR PRIVATE USE, AS NOTED.

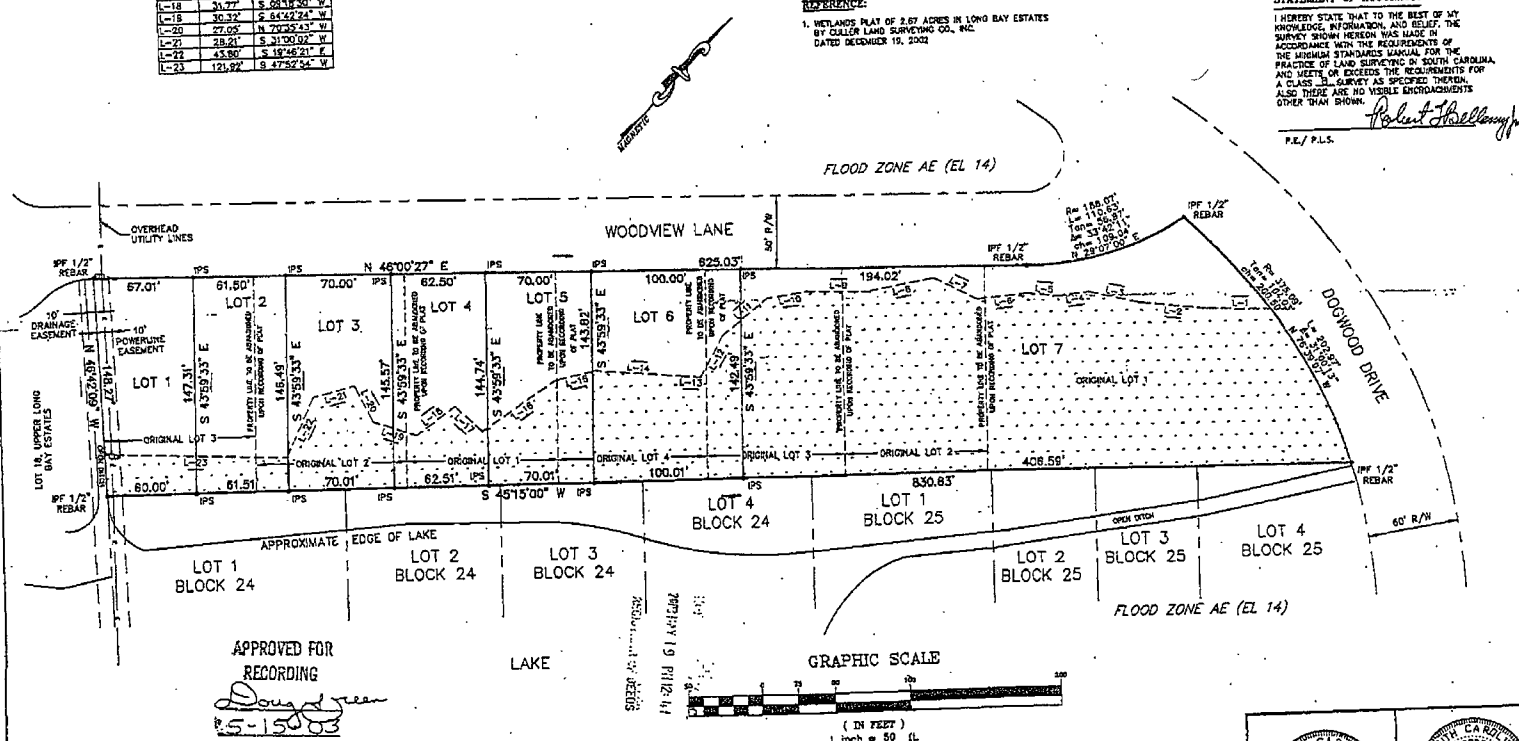
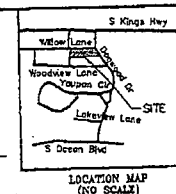
DATE: 5/15/2013 OWNER: Thomas L. Dicks

NOTE:
PARCels INTENDED FOR SINGLE FAMILY
SITE-BUILT - 1-1/2 OR 2 DUPLEXES.

STATEMENT OF ACCURACY:

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 "B" SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OTHER THAN SHOWN.

P.L./P.L.S.



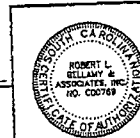
FB, 321, PG. 14



ROBERT L. BELLAMY & ASSOCIATES, INC.
CONSULTING ENGINEERS, PLANNERS & SURVEYORS
4708 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577
PHONE (803) 449-9433

SURVEY MAP
RESUBDIVISION OF BLOCKS 28 & 29,
AT LONG BAY ESTATES
SOCASTEE TOWNSHIP, HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR: THOMAS L. DICKS & ROBERT E. DICKS, JR.

W.O. NO. 1130-1
DRAWN BY: CD
CHECKED BY: PLS
DATE: 4-22-2003

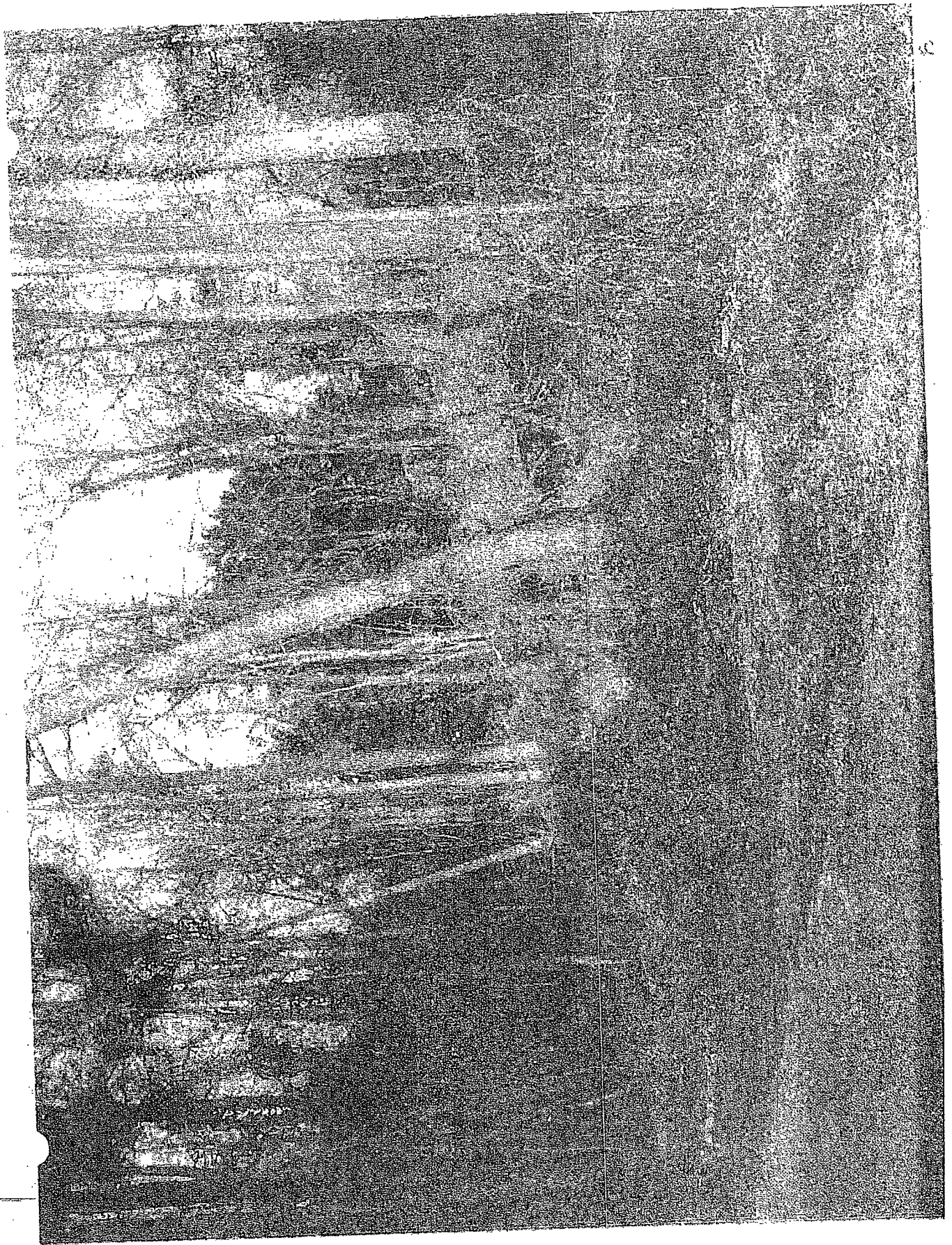


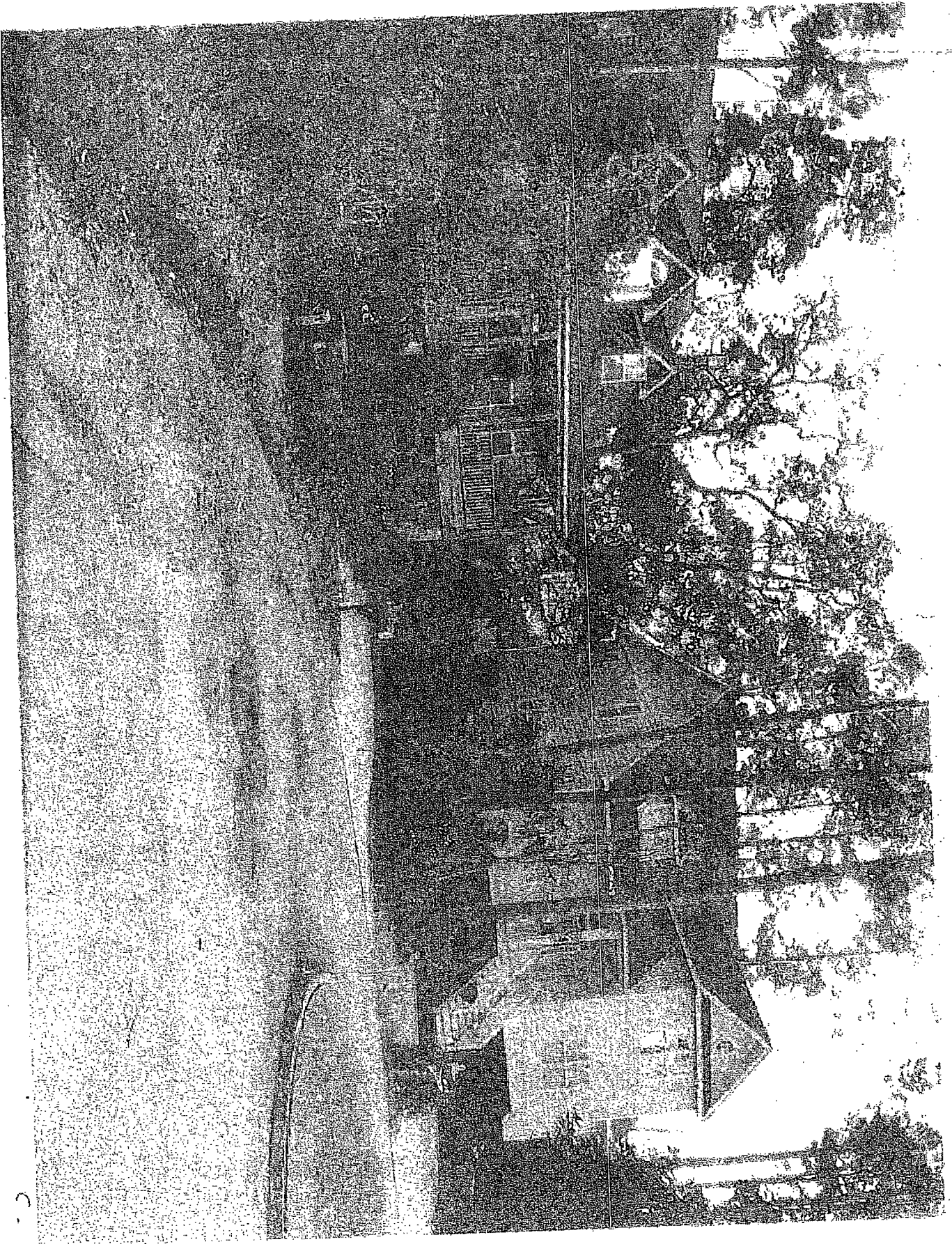
FILE NO. 534-B

DEPT. 8
4/12/11





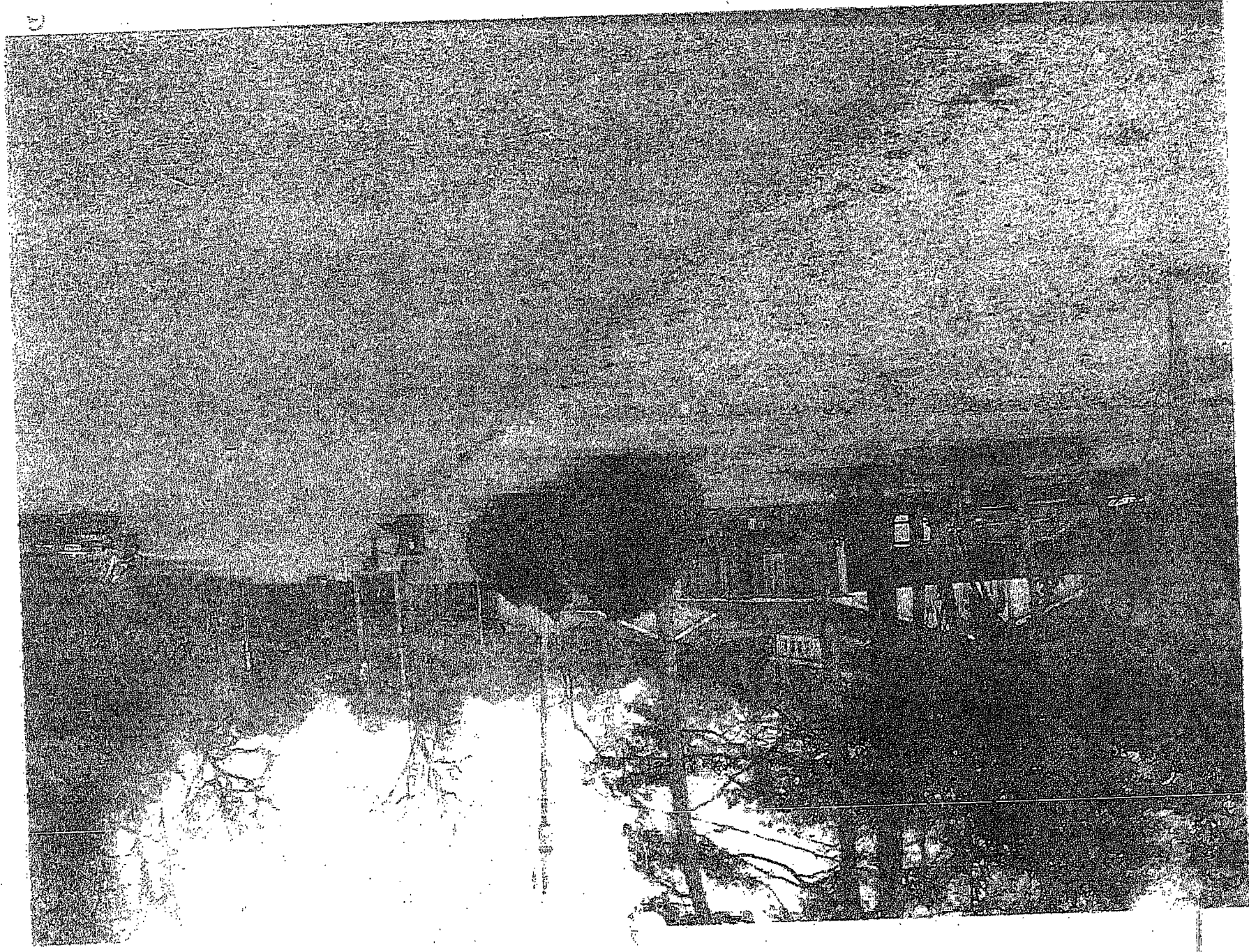


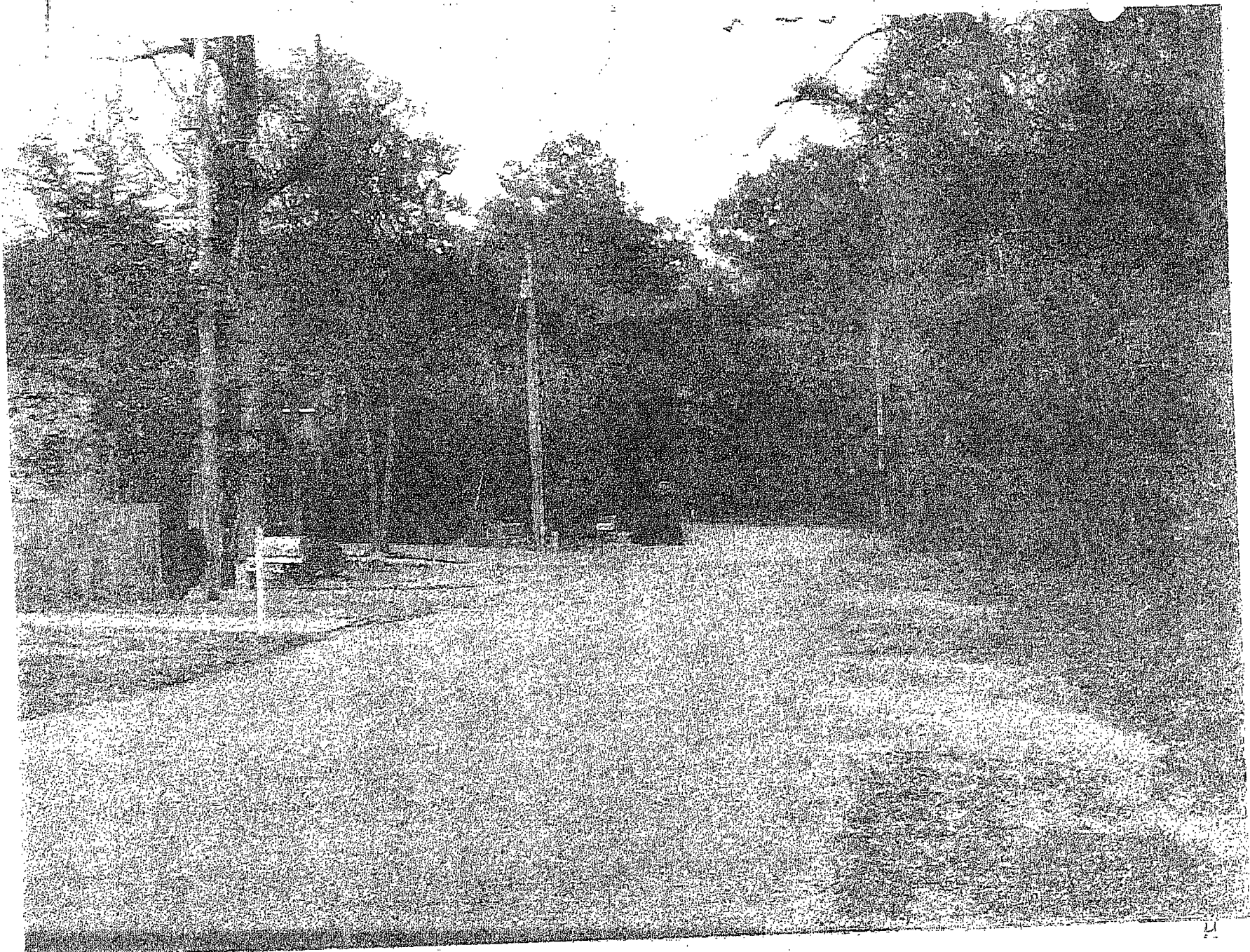


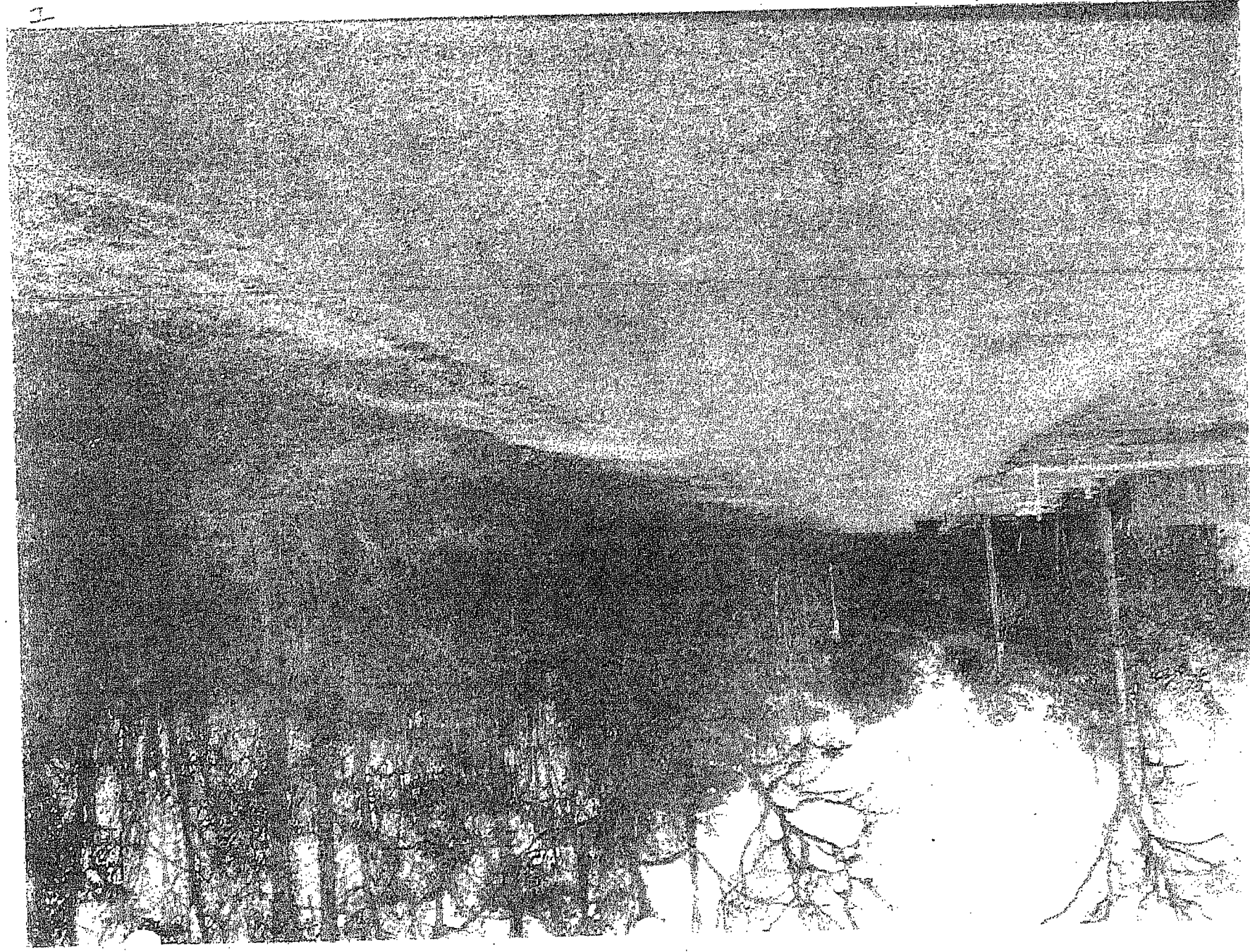


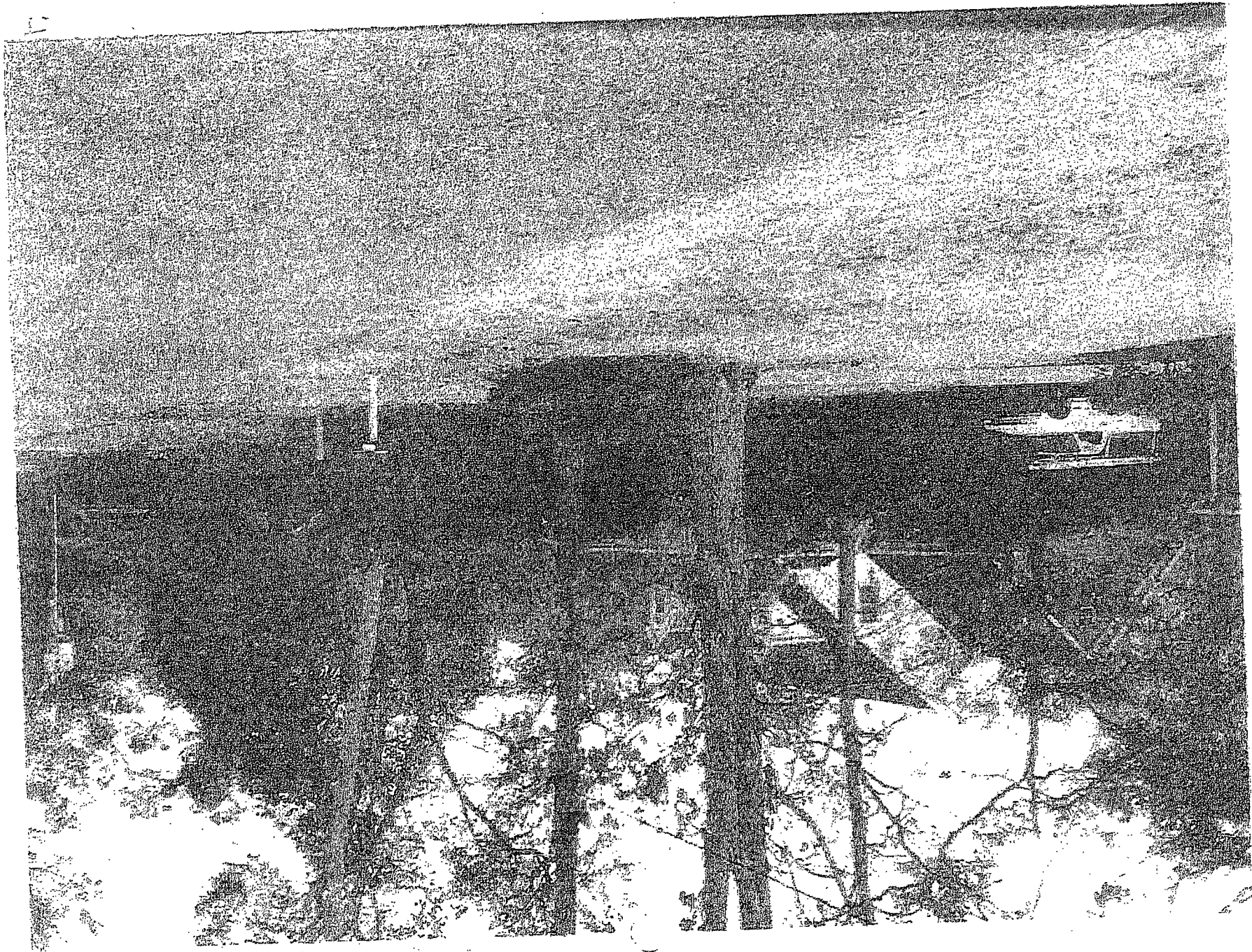




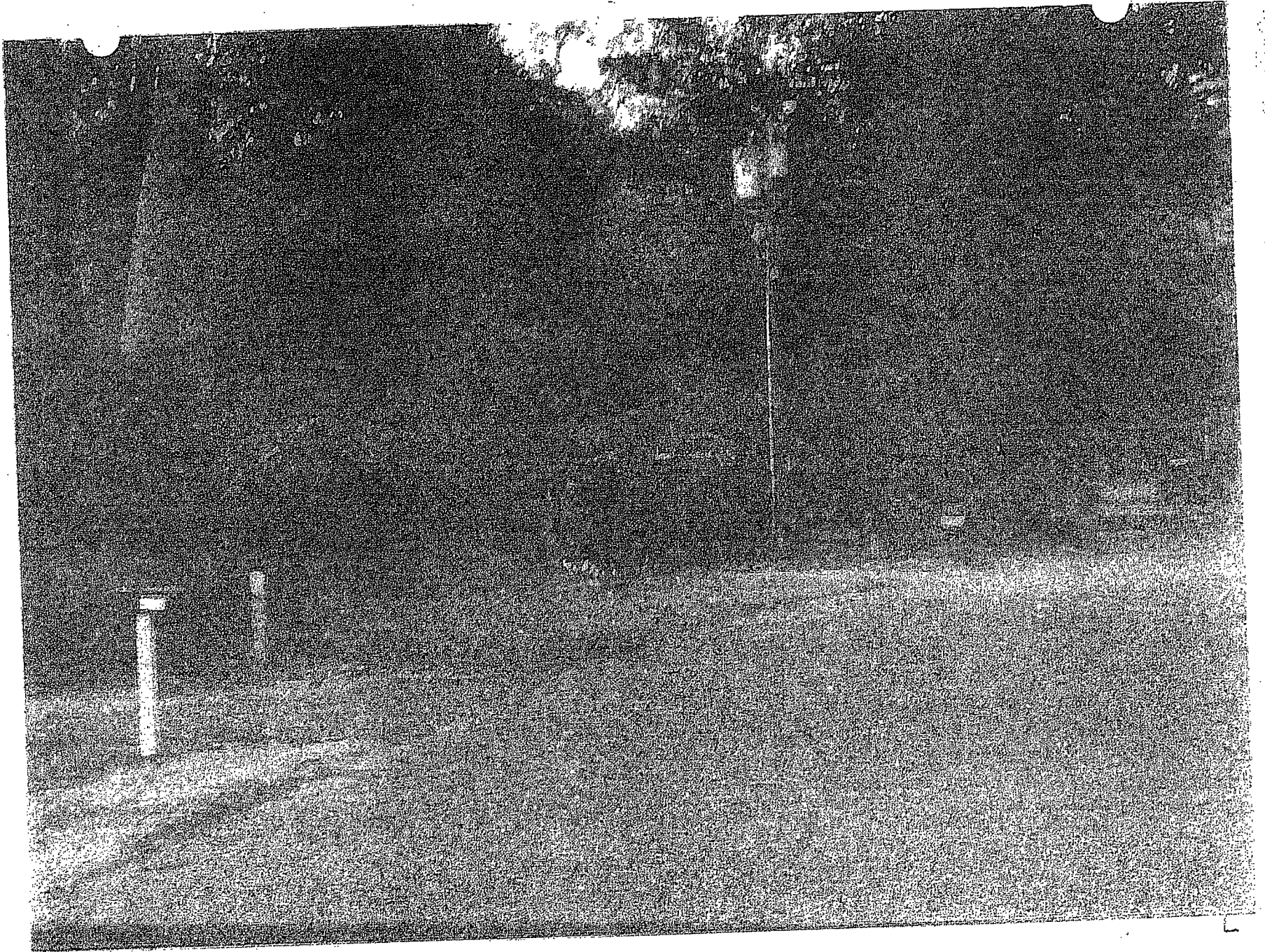




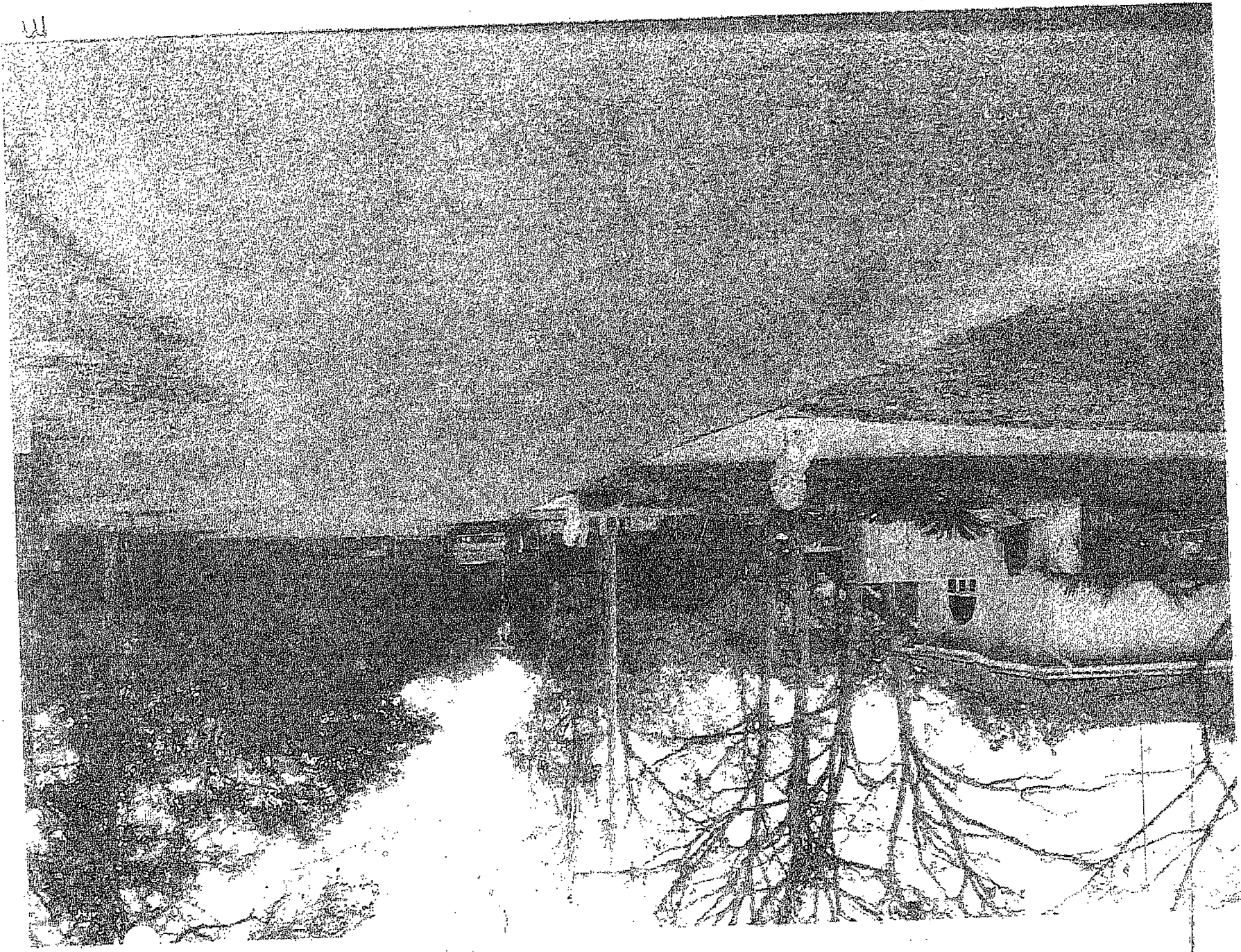


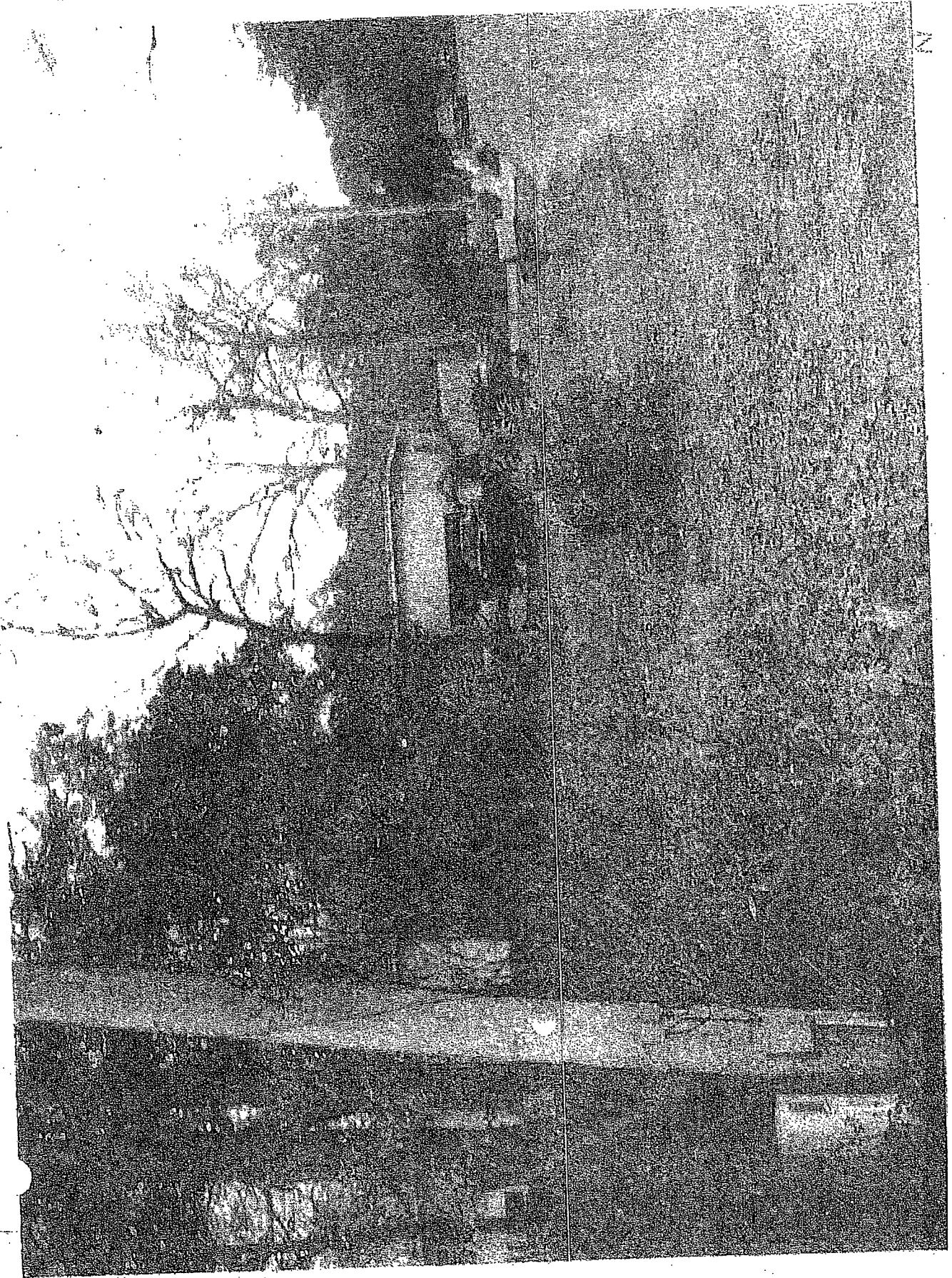


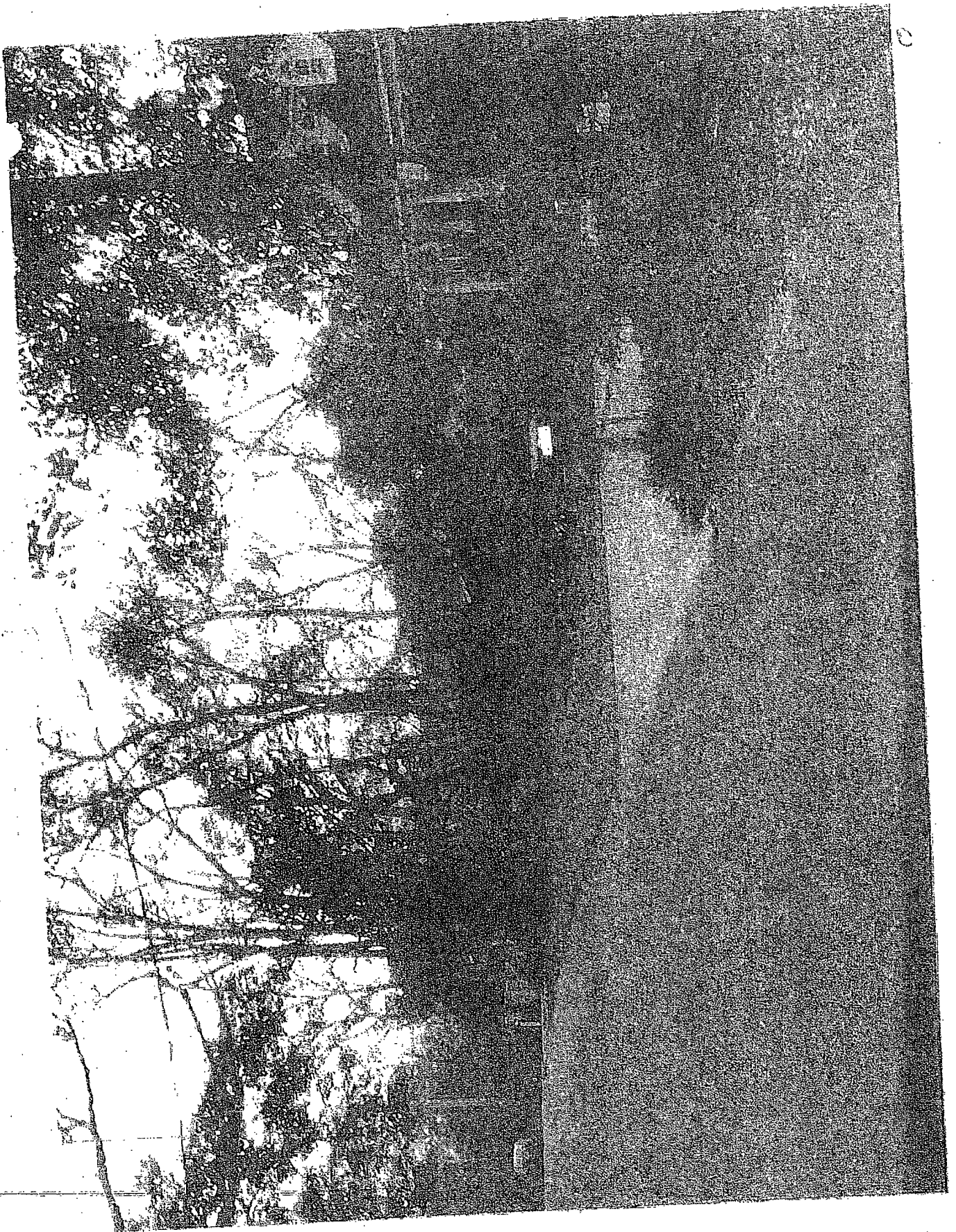




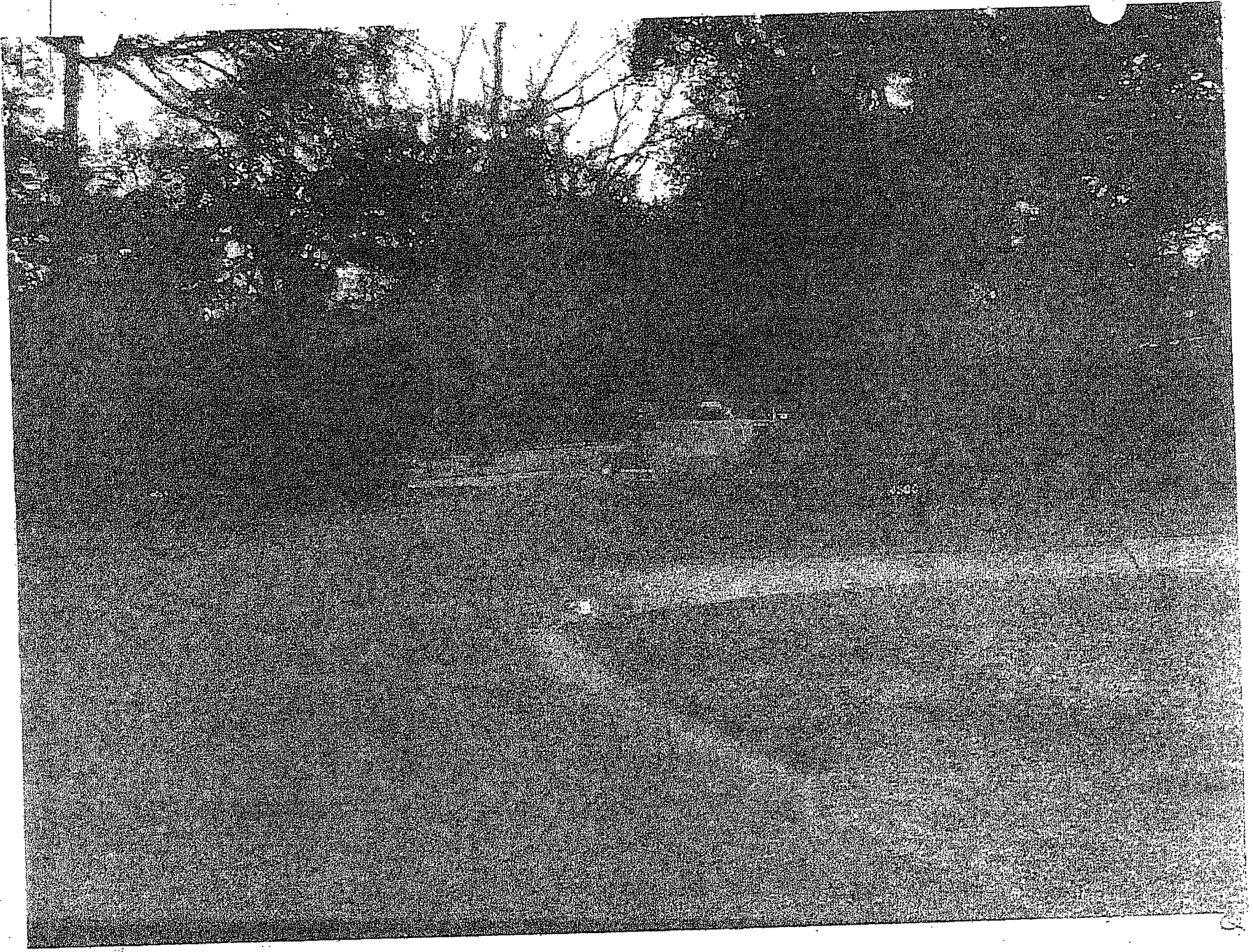
W











SEP. 30. 2005 2:39PM

CHICAGO

NO. 226 P. 2/3

OWNERS FORM
TICOR TITLE INSURANCE COMPANY
1704 Main Street, 1st Floor, Columbia, SC 29201

SCHEDULE A

OFFICE FILE NUMBER:
POLICY NUMBER:
DATE OF POLICY:
AMOUNT OF INSURANCE:

97-223
41 8013 087 00000231
September 4, 1997, at 11:43 a.m.
\$145,000

1. **Name of Insured:**

David W. Meese, Jr. and Leigh Annons Meese

2. **The estate or interest in the land which is covered by this Policy is:**

Fee Simple

3. **Title to the estate or interest in the land is vested in the insured.**

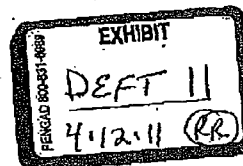
4. **The land herein described is encumbered by the following mortgage or trust deed, and assignments:**

Mortgage from David W. Meese, Jr. and Leigh Annons Meese to Carmen F. Ward, Trustee, et al, dated September 3, 1997, in the original principal amount of \$95,000, recorded on September 4, 1997, at 11:43 a.m. in Mortgage Book 2197 at Page 886, Horry County records.

5. **The land referred to in this Policy is described as follows:**

~~ALL AND SINGULAR~~, that certain piece, parcel or tract of land lying situate and being in Long Bay Estates, Socastee Township, Horry County, South Carolina containing 2.67 acres (more or less) as depicted on that certain survey dated July 24, 1997 prepared for David Meese and Leigh A. Meese by Culler Land Surveying Co., Inc. which was recorded on September 4, 1997 in the office of the RMC for Horry County in Plat Book 143, at Page 232, reference to which is craved as forming a part of these presents.
TMS# 106-14-05-001

WM



SCHEDULE A
Owners Form
(Rev 1/89)

This Policy valid only if Schedule B is attached.

COPY

SEP. 30. 2005 2:39PM

CHICAGO

NO. 226 P. 3/3

OWNERS FORM
TICOR TITLE INSURANCE COMPANY
SCHEDULE B

Policy Number: 41 9013 097 00000231

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

General Exceptions:

None

Special Exceptions:

- (a) Taxes and assessments for the year 1997 and all subsequent years, which are a lien, but are not yet due and payable.
- (b) ~~The deeds in the chain of title to the property described in schedule A hereof contain no restrictive covenants. Deeds purporting to convey other lots within the subdivision of which the above described property is a part, however, do contain restrictive covenants. This policy is based upon examination of title to the property herein identified, and affords no insurance as to the possible effect of restrictions which may, or may not, be applicable by reason of the general plan of development of the subdivision.~~
- (c) ~~Ten foot (10') power line easement traversing the subject property as depicted on the Cullar Land Survey Co., Inc. Survey referred to in Item 3 of Schedule A.~~
- (d) The mortgage referred to in Item 4 of schedule A.
- (e) No insurance is afforded as to the exact amount of acreage contained in the property described herein.

WA

Countersigned

William A. J. L...
Authorized Signature

Schedule B of this Policy consists of 1 page(s).

SCHEDULE B
Owner's Form
(Rev. 1/89)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

SELLER'S AFFIDAVIT
AND INDEMNITY

PERSONALLY appeared before me, the undersigned Sellers, who being duly sworn, depose and say on oath that the following described property is owned by Sellers to wit: Long Bay Estates (2.67 acre tract) TMS #186-14-05-001.

THAT there is no outstanding indebtedness for equipment, appliances or other fixtures attached to said property.

THAT the lines and corners of said property are clearly marked and there are no disputes concerning the location of the lines and corners.

THAT there are no pending state or federal suits or proceedings (including but not limited to Divorce), nor are there any judgments (including but not limited to Divorce), bankruptcies or executions against Sellers in any jurisdiction in the United States nor is the above described property subject to any liens or encumbrances whatsoever.

THAT there are no outstanding bills incurred for labor and materials used in making improvements or repairs on said property, or for service of architects, surveyors, or engineers incurred in connection therewith for improvements or repairs made on the above described property during the three months immediately preceding the date of closing.

THAT there are no tenancies, leases, or other occupancies upon the above described property;

THAT SELLERS know or have no reason to know of any environmental liabilities or hazardous waste liabilities affecting the Property;

THAT SELLERS have received no notice from any public authority, requiring any condemnation, improvement, alteration or change to be made in or about said Property;

FURTHER, Sellers agree to indemnify and hold the Purchaser of the above described property, Dusenbury, Hendrix & Little and TICOR harmless from all claims, demands, costs, including reasonable attorney's fees and court costs (also including reasonable attorney's fees and court costs incurred enforcing this indemnity) which Purchaser, Dusenbury, Hendrix & Little and TICOR might sustain or incur resulting from any inaccuracy in the above representations or from any claimant or lienholder whatsoever.

SWORN TO BEFORE ME THIS

2 day of September, 1997.

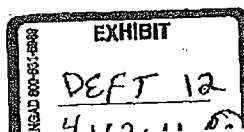
Ron B (LS)
Notary Public for New Mexico
My Commission Expires: 9-16-2000

SELLERS:

(Carmen F. Ward, Marion G. Whitaker, Richard C. Lewis, Jr., Raymond H. Lewis, Carol L. McKellar Levin, Peter S. Lewis)

Carmen F. Ward, Trustee
and Attorney in Fact

BY: for Sellers
Carmen F. Ward, Trustee and
Attorney-In-Fact for Sellers



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

ON BEHALF OF THE PLAINTIFF:

THOMAS C. BRITTAIN, ESQ.
Brittain Law Firm
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Myrtle Beach, South Carolina 29577

ON BEHALF OF THE DEFENDANTS:

DEMETRI K. KOUTRAKOS, ESQ.
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Columbia, South Carolina

INDEX OF EXAMINATION

Page

Examination by

INDEX OF EXHIBITS

Defendants' Exhibit

Marked

13- Enlarged map of Long Bay Estates subdivision. 4

- - - - -

1 - - - - -
2 (Thereupon, Defendant's Exhibit
3 Number 13 was marked)
4 - - - - -

5 THE COURT: Please be seated. Thank
6 you so much. I apologize again.

7 MR. BRITTAIN: You're the Judge.

8 THE COURT: Just as I was getting ready
9 to walk out, I had three people show up with
10 deeds. So it was either sign them then or have
11 people come in here and sign them in here.

12 Anyway, I apologize.

13 Mr. Brittain.

14 MR. BRITTAIN: Your Honor, I have the
15 burden so I think I should go last. Mr.
16 Koutrakos kept saying I have the burden. So I
17 can open and close or I could just close, either
18 one.

19 THE COURT: However way you want to do
20 it.

21 MR. KOUTRAKOS: I think he has the
22 burden and he should go first.

23 MR. BRITTAIN: No, the burden goes
24 last.

25 MR. KOUTRAKOS: Okay. I just have one

1 administrative matter.

2 This plat, this is the large plat. You
3 have the small version. This is the 1955 plat.
4 I've talked to Tommy about this. We are going to
5 introduce this as Defendant's Exhibit 13 into
6 evidence. I'll fold it off this board and give
7 it to the court reporter.

8 MR. BRITTAIN: We've agreed on all of
9 the exhibits. They are all in evidence. If we
10 didn't formally move them in, they're in.

11 MR. KOUTRAKOS: Except the proffered
12 ones.

13 MR. BRITTAIN: The proffered ones are
14 in as proffered, right.

15 THE COURT: All right. Very good.

16 MR. KOUTRAKOS: May it please the
17 Court, your Honor. As Mr. Brittain said, he's
18 right, the plaintiff has the burden of proof in
19 this case. And the burden is to show that some
20 covenants apply to my client's property. And the
21 standard is they have to apply by either their
22 expressed terms or unmistakable implication.

23 So, for the plaintiff to win in this case,
24 the Court has to find that whatever restrictions
25 the plaintiffs say apply to the property, that

1 they have to be shown expressly or by
2 unmistakable implication. That's the standard.
3 I strongly do not believe that the plaintiff can
4 meet that burden.

5 As the Court knows, covenants are strictly
6 construed against limitations of the free use of
7 property. That's the standard set forth by the
8 Appellate Court.

9 This case involves these plats of record.
10 You have seen some plats that are not of record
11 that have been introduced. I would ask that the
12 Court ignore the plats that are not of record
13 because the way you would view restrictions on
14 the public records is you have to look up the
15 public records and you have to go to a surveyor's
16 office to find whatever that is, a draft of a
17 map, who knows what it is, to determine what a
18 Restrictive Covenant means.

19 Now, as you heard yesterday, there is the
20 1955 plat. And all parties have admitted that
21 the 1955 plat shows Blocks 20 and 29 as seven
22 lots. The Court of Appeals found the Request For
23 Admission in the record and it clearly shows the
24 property is seven lots.

25 The 1972 Order has this map attached to it.

1 And here is something interesting about this map.
2 A lot has been made as to what this map says and
3 what this map doesn't say. We will argue that
4 this map shows our property, the property in
5 question, as containing seven lots. The Court of
6 Appeals found that this map shows seven lots on
7 my client's property.

8 And it's important to know that it says
9 it's a comparative locations map of property.
10 And what it means by that is, what the surveyor
11 did, he took various surveys that were of record
12 and, for lack of a better word, he overlaid them
13 on top of each other. And in order to show where
14 the different -- to show how the different plats
15 were referred to, he had some plats that were
16 shown as straight lines, and it says it right
17 here, Lots 30, 32 and 34 shown by solid lines.
18 And then he says Blocks 28 through 33 as shown,
19 Plat Book 25 of Page 22, the 1955 map,
20 represented by dotted lines.

21 So that's how he referred, that's how he
22 was able to put both maps on this comparative
23 location map on this one exhibit to the Order so
24 people could know where the information came
25 from.

1 So our position is that when this map was
2 recorded, I mean when this map was put as part of
3 the Order, parts of Blocks 20 and 29 were clearly
4 cut off but they never did away with the lots.

5 If you look at the 1972 Order, the 1972
6 Order says nothing about doing away with any lots
7 on the property. In fact, in paragraph three of
8 the Order it says, it specifically refers to
9 Blocks 28 and 29. This is Page 4 of the Order,
10 paragraph three. I think I have it here.

11 It says, "All property on the Lewis Estate
12 lands' side of the common boundary line is shown
13 on the map recorded in Plat Book 25 at Page 22 as
14 being divided into lots and blocks, including
15 additional Blocks numbered 28, 29, 30, 31, 32 and
16 33 thereon, which are shown within that portion
17 of the plaintiffs' land area described on the
18 first page of this report."

19 So, the Order acknowledges that Blocks 20
20 and 29 do in fact have lots.

21 In fact, interestingly, there is other
22 property that was involved in this litigation
23 called the Casalina Corporation property. And it
24 says, "On the Casalina Corporation side of the
25 common boundary this is not the case, only a

1 portion of that property being shown as
2 subdivided into lots and blocks, the rest of it
3 being undeveloped according to the map."

4 So if you read the Order, you would come to
5 the conclusion and, of course, the Order is what
6 we have to go by because the Order is what
7 plaintiffs say encumbers their property. And if
8 you look at this Order, it shows Blocks 20 and 29
9 as being divided into lots. The Court was
10 clearly able to distinguish between what was
11 subdivided into lots and what wasn't. It found
12 Blocks 20 and 29 to be lots.

13 Another point I want to go through, there
14 is a lot of mention made of why the Complaint was
15 filed in the first place, that the intent of the
16 plaintiff in that case was to have these
17 restrictions somehow applied to the property.
18 And I don't think that was the case. I think
19 when the Complaint was filed it was a Complaint
20 complying title.

21 And, in fact, there was a dispute and the
22 Court decided the dispute. The dispute is
23 whether the defendants in that case argued that
24 the restrictions applied to everything shown on
25 the plat even though it said that, even though

1 the restrictions said only Blocks 1 through 27.

2 And on Page 6, Paragraph 2, it says, "Such
3 declaration negates an implicit extension of the
4 restrictions or protective covenants outside of
5 the specified blocks, and although defendants
6 have alleged representations in sales of
7 property, and have relied on the 'residential
8 subdivision' legend on the map, no proof of these
9 allegations was offered and so I had find and
10 hold that the portion of the plaintiffs' property
11 with which their action concerns itself is not
12 subject to any restrictions or protective
13 covenants beyond Block 27."

14 So there was a dispute in that case and the
15 Court decided that dispute. Of course, later
16 there was an agreement of the parties and that is
17 the crux of the issue in this case. What does
18 this language mean? What does this language mean
19 right here? "In like manner, the remaining
20 portions of 'old' Blocks 28 and 29." That
21 language, you heard a lot said about that.

22 First of all, it refers to the area lying
23 between the rear of Blocks 24 and 25. Excuse me.
24 Let me back up.

25 "In like manner, the remaining portions of

1 "old" Blocks 28 and 29." That one clause would
2 indicate that the blocks were not done away with.
3 They're still there. They haven't gone away.

4 It says, "are subject to such residential
5 restrictions, but with right of revision of the
6 lot arrangement or for combination with abutting
7 portions of lots in Blocks 24 and 25."

8 By the use of the word "lot arrangement,"
9 it presupposes that there are lots there to begin
10 with.

11 It also says, "or for combination with
12 abutting portions of lots in Blocks 24 and 25."

13 The argument is that this 1972 Order
14 modified the restrictions attached to this plan.
15 The Court said, Hey, per agreement of the parties
16 ongoing, the Court is going to find that these
17 restrictions apply to Blocks 28 and 29. But, and
18 the word "but" is important because it's an
19 exception to the restrictions, "but with right of
20 revision of the lot arrangement or for
21 combination with abutting portions of lots in
22 Blocks 24 and 25." This is a right that was
23 given in the Order. A right that was given that
24 was not limited to anybody.

25 Now, the next paragraph, Mr. Brittain I'm

1 sure will argue, that "the restrictions uniformly
2 used in this area and the declaration recorded in
3 25 and 22 reserve to grantor the right to change
4 boundary lines and building lines as to any
5 unsold lots in any event."

6 What does that mean? Quite frankly, I
7 don't know. I think it's surplusage. It's
8 there. Why is it in there? Is it saying that
9 the restrictions attached to this map, well, it's
10 paraphrasing what the restrictions attached to
11 the map said. And if the Court wanted the
12 restrictions to apply, in the same manner as
13 they're written attachment to the plat, why did
14 it include that language?

15 Perhaps it included that language to say,
16 Hey, I think this agreement is fair because you
17 guys bought this property at one point in time
18 and when you bought it it showed Blocks 28 and 29
19 as containing lots and you have a right to
20 believe that there would be residential lots
21 there instead of this large acreage. And, so,
22 when you bought that property it's fair that
23 there were seven lots and it's fair now that
24 there could continue to be seven lots. So
25 you're not prejudiced by it. Perhaps that's why

1 they included that in there. I don't know.

2 But it's clear that the right of revision
3 was not limited to anybody. It was not limited
4 to the plaintiff. It runs with the land.

5 I have cited, your Honor, in my pretrial
6 brief, the case of Newbury Electric. And in that
7 case the Court said there was a right in the
8 chain of title to have a power company move some
9 power lines. And the Court found that that right
10 or that benefit ran with the chain of title.

11 The same kind of thing that we have here.
12 This right would run with the land and it's
13 something that my client possesses.

14 Now, if we have to look at unrecorded
15 plats, if we have to look at what Carmen Ward did
16 in another case that doesn't affect this
17 property, if we have to cobble together, like the
18 plaintiffs tried to do, information to try to
19 figure out what the plaintiff intended in that
20 case, then I would argue that this land would be
21 ambiguous.

22 My first argument is crystal clear. This
23 right runs with the land. It's something that
24 the people in the chain of title relied upon,
25 lawyers relied upon, and this Order would have to

1 be considered.

2 But, if you have to cobble together all
3 this information to figure out what the language
4 means, then the language is ambiguous. There is
5 doubt as to the language and that language would
6 have to be construed in the light most favorable
7 to the free use of property.

8 And your Honor is familiar with the cases.
9 We have cited them in our pretrial brief.
10 Ambiguities are strictly construed against
11 parties seeking to enforce covenants. If the
12 language at issue could be construed more than
13 one way, the Court must construe it in my
14 clients' favor.

15 Now, let's talk about what happened. When
16 Carmen Ward sold the property to my clients, she
17 sold it by reference to this map which is in
18 evidence, and it's called Original Survey of 2.67
19 acres. So Mr. Culler, who prepared the survey,
20 perhaps thought this property had never been
21 surveyed before. It looks to me to be a
22 boundary survey. It doesn't reference that it's
23 a lot, that it's one lot that's been identified,
24 it doesn't say that the property is only being
25 sold as one lot. The deed to the Wards, from

1 the Wards, from Miss Ward to the Meeses, doesn't
2 restrict it to only being one lot.

3 There is nothing -- if Miss Ward wanted to
4 sell it as one lot, she could have. She could
5 have put something in the deed that said this
6 property could only be used as one lot. That
7 could have easily been done. That wasn't done.

8 Another thing interesting, of course, is
9 that this plat is not made out to Carmen Ward.
10 It's made out to David and Leigh Meese. Mr. And
11 Mrs. Meese had the right to revise the lot
12 arrangement. They're the ones who did the
13 subdividing. Is that proper? I don't know. I
14 think the right runs with the land.

15 In any event, the restrictions do not
16 provide for any right of combination. If there
17 were seven lots there, there is no right to
18 combine the lots. There is a right -- of
19 course, the restrictions attached to the plat say
20 nothing about combination, you cannot subdivide.

21 And the grantor, again, who is the grantor?
22 I don't know. It's an undefined term. No one
23 knows who the grantor is. On the four corners of
24 this document, I don't know who the grantor is.

25 In the 1972 Order, it paraphrases the

1 language of the 1955 Covenants and it says
2 grantor. What does that mean? Undefined term.
3 We don't know what that means.

4 But, in any event, going back to my point,
5 as to any unsold lots, the grantors reserve the
6 right to change the boundary lines and building
7 lines thereof. So they can change the boundary
8 lines of unsold lots. It doesn't mean to do away
9 with the lots. It can change the building lines
10 of lots. To me, that means setbacks. That
11 means setbacks. As to construction, setbacks is
12 where the building can be put on a particular
13 lot. Those are the two rights the grantor,
14 whoever that was, had a right to do. It did not
15 have a right to combine the lots.

16 So to the extent Carmen Ward exercised her
17 right of revision, which, by the way, even if she
18 did, would still run with the land, but even if
19 she exercised her right of revision to make the
20 property one lot, that's a void act. That act
21 can't be done. It's not authorized by the 1972
22 Order. It's not authorized by the restrictions
23 attached to the 1955 plat. It did away, the
24 argument is, it did away with lots when they had
25 no authority to do so. The authority was to

1 change right of revision of the lot arrangement.
2 To change the way the lots were arranged.

3 And if you look at the word arrange, you
4 are changing the order in which things are
5 placed. When we rearrange these two pads here,
6 I'm moving them around but they still exist. If
7 I take them away I'm not rearranging them, I'm
8 taking something away. It's kind of elementary,
9 your Honor, but we have to somehow figure out how
10 this language should be interpreted. And if I'm
11 throwing out definitions, it's because I want to
12 provide the Court assistance on how we should
13 interpret this.

14 My point, your Honor, is that Carmen Ward
15 or anybody had no right to do away with these
16 lots.

17 The 1972 Order, the purpose of it and the
18 purpose of the 1955 plat was to show that this
19 was a residential subdivision. People bought
20 lots relying on this plat. The '72 Order made
21 the covenants apply as provides by the '72 Order
22 to Blocks 22 and 29. To say that the intent was
23 for Carmen Ward to do anything that she wanted,
24 there is some testimony Carmen Ward could have
25 done anything. For example, in the DeCiero case,

1 a case that doesn't affect this property, it's
2 not in the chain of title of this property,
3 Carmen Ward sold property to the Long Bay
4 Properties, the Ammons entity. And in that deed,
5 she basically gave them the right by changing the
6 restrictions to say this property could be
7 subdivided. Of course, which would be in
8 violation of no lot shall be subdivided.

9 And litigation was filed over that and said
10 that she didn't have that right. She didn't have
11 the right to combine the lots either and that's
12 what was attempted to be done. So we think
13 that's a void act.

14 Also, I want the Court to take notice of
15 the Horry County Land Development Regulations
16 which talk about combination of lots. And it
17 says when you combine lots you have got to show
18 the old lots on the subdivision survey and show
19 them on a survey and show which lots have been
20 taken away.

21 For example, when you look at the survey
22 that my clients had prepared by Mr. Bellamy in
23 2003, you will see that it shows property lines
24 to be abandoned, presumably because that is
25 what's required by the code. In the Meese plat,

1 that was never done. No lots were abandoned. It
2 didn't comply with the zoning regulation.

3 So I would like to ask the Court to take
4 judicial notice of Horry County Land Regulation
5 4.6 regarding combination of lots. If I could
6 hand it up to the Court. That's the only copy I
7 have, I'm sorry (handing).

8 And the question becomes is Carmen Ward
9 really the grantor? I'm not quite sure she is
10 the grantor. And I would argue that she wasn't
11 the grantor.

12 If you look at the language of the 1972
13 Order, paragraph two, it says, "The lands
14 developed by the plaintiffs and their
15 predecessors-in-title." And there was a deed
16 that was introduced into evidence which was a
17 deed conveying property. There was a Nursery
18 Realty Corporation conveying property from Mr.
19 Lewis and somehow it wound up in Carmen Ward's
20 name as trustee. So we would argue that Carmen
21 Ward is not the grantor, whatever that means, to
22 begin with.

23 There were arguments made yesterday about
24 what the Complaint said in the 1972 case. I
25 think I already mentioned this but I think when a

1 lawyer or anybody looking at the chain of title,
2 it's not what the parties allege, it's what the
3 Court rules. And I don't think any deference
4 should be paid to what the plaintiff alleged when
5 the final determination of the Court is contained
6 actually within the final Order issued.

7 Also, I want to talk about, your Honor, the
8 Shelter Rule. You heard testimony yesterday
9 from Jay Dusenbury. Jay Dusenbury represented
10 the Meeses. He was crystal clear that he didn't
11 have any notice. His job was to check title. He
12 checked title. Everybody, I think, who checked
13 title, with the exception of Mr. DeCiero, did not
14 find the 1972 Order.

15 David Meese testified very clearly that
16 both he and his wife had no knowledge. He
17 testified that he had no knowledge of the 1972
18 Order, no knowledge of any restrictions.

19 Leigh Meese was not as clear. She
20 testified that she could not come into court and
21 say that she had notice of the 1972 Order at the
22 time she purchased the property. Now, she did
23 also testify that she did have notice at some
24 point but she couldn't recall exactly when. I
25 think the reasonable inference to be made is that

1 she did not have notice.

2 The 1972 Order came to light in the DeCiero
3 litigation. That was filed in 1998. Our closing
4 took place in 1997. Her husband didn't know.
5 Her husband says she didn't know. The closing
6 attorney didn't know. So I think the reasonable
7 inference is she didn't know. I think the Court
8 can make that reasonable inference.

9 In any event, clearly David Meese is a bona
10 fide purchaser for value. Our argument is we
11 bought from two bona fide purchasers for value.
12 In the event the Court finds that Leigh Meese is
13 not one, we certainly bought from one bona fide
14 purchaser for value and that is David Meese.

15 So what does that mean? Think about it in
16 the context of if I buy a piece of property with
17 a tenant in common. We both have an undivided
18 half interest in the property. I have some
19 notice of, say, monetary judgment on the property
20 and the cotenant doesn't, about to be cotenant
21 doesn't. We buy the property and there is
22 judgements out there.

23 I think the fair thing to say is that the
24 cotenant, post cotenant, who is now cotenant, who
25 knew about this issue would be subject to that

1 judgement, and the cotenant wouldn't be. That's
2 the fair thing to do. Because the cotenant who
3 didn't have any knowledge bought the property
4 without knowledge and his undivided half interest
5 should be protected.

6 Taking that concept and trying to put it in
7 this case is difficult because we are talking
8 about expectations of buyers. We have an
9 expectation of a buyer who is going to buy the
10 property and has no notice of any restrictions.
11 You can't say the restrictions apply to an
12 undivided half interest because the restrictions
13 would apply to the whole.

14 So I think if the Court looks at the clear
15 testimony of Mr. Dusenbury, the clear testimony
16 of Mr. Meese, somewhat clear, in some aspects,
17 testimony of Leigh Meese, that she couldn't
18 testify that she had notice at the time she
19 purchased the property of the restrictions of the
20 '72 Order, I think the conclusion should be that
21 they're all bona fide purchasers for value.

22 And we can step into their shoes under the
23 Shelter Rule, as the Court of Appeals recognized,
24 "we," meaning my clients, can step into the shoes
25 of David and Leigh Meese.

1 You heard a lot of testimony yesterday
2 about what David Meese or Leigh Meese or Jay
3 Dusenbury knew in 2000, 1999, 2001, 2002, 2003.
4 That's irrelevant to the analysis. The relevant
5 time period is when they purchased the property
6 in 1997. That doctrine was recognized by the
7 Court of Appeals, it was recognized by other
8 cases the Court of Appeals relied upon. And, so,
9 we believe, under the Shelter Rule, that our
10 clients, my clients, are bona fide purchasers for
11 value who owned the property free and clear of
12 the restrictions.

13 If I could have a moment with my client,
14 your Honor.

15 Your Honor, one point is perhaps you could
16 get a dozen lawyers or 50 lawyers and 50 judges
17 to look at the language of the 1972 Order and
18 perhaps you will get a difference of opinion.
19 You will have some judges and some lawyers saying
20 it's one thing and other judges and lawyers
21 saying it's another. That is evidence, your
22 Honor, that that language is absolutely
23 ambiguous. And our alternative argument is that
24 it is ambiguous. Who knows what it means.

25 When you have to piece together all this

1 off record information to try to figure out what
2 it means, that means that that language by its
3 very nature is ambiguous. If it's ambiguous,
4 it's not there by plain and unmistakable terms
5 and it should be construed in the light most
6 favorable to the free use of the property.

7 I'll be more than happy to answer any
8 questions that you have later on. Thank you.

9 MR. BRITTAIN: May it please the Court.

10 THE COURT: Certainly.

11 MR. BRITTAIN: Your Honor, I think
12 several things have happened in connection with
13 the presentation of evidence that have changed
14 the nature of the case. I have been kind of
15 surprised by the way they turned out.

16 I don't think it matters any more that the
17 '72 Order wasn't in the chain of title. We
18 certainly conceded that in the beginning of this
19 case and it is true.

20 Not only do we have now from the testimony
21 of Mr. Mumfórd that Mr. Dicks had the '72 Order,
22 he had it. The lawyer had the '72 Order. So
23 what difference does it make whether it was in
24 the chain of title or not? Because the lawyer
25 handling the case had the Order before this title

1 was written based on Mr. Dicks' testimony and Mr.
2 Mumford's testimony.

3 So the original finding that the '72 Order
4 was not in the chain of title no longer has any
5 significance for this case. And we get that from
6 Mr. Dicks' testimony, which the Court of Appeals
7 never had, and Mr. Mumford's testimony. He had
8 in his hands the '72 Order.

9 Now, one of the linchpins for the reverse
10 and remand in this case was the fact that it was
11 not in the chain of title. But what the Court of
12 Appeals never knew was the lawyer had it anyway.
13 So let's take a look at the '72 Order.

14 And I agree with one thing that Mr.
15 Koutrakos said, lawyers can stand up here and
16 argue all day long and 12 of them argue different
17 things.

18 Let's go to the common sense approach to
19 the '72 Order which we brought you as much
20 evidence as we could, both of us. Let's read the
21 portions of the Complaint that matter. This
22 Court is very involved in real estate and knows
23 how these things happen.

24 Mr. Mumford admitted the '72 Order made
25 those restrictions applicable to the property

1 that the Dicks purchased. No question about it.
2 And he had it.

3 So let's go take a look at those
4 restrictions. Those restrictions limit the
5 subdivision of lots without question. And
6 they're made applicable by the '72 Order.
7 That's why it was such a big deal that it wasn't
8 in the chain of title. But guess what? He had
9 it. In fact, that's even better than it being
10 in the chain of title because a person couldn't
11 miss it in the chain of title. But we know for a
12 fact he had it and read it.

13 We also know that part of the litigation
14 surrounding the '72 Order was that map was
15 inadvertent and improper. That's before the
16 Court. That's evidence in this courtroom without
17 objection. That map has been disputed. And
18 their lawyer said it didn't make any sense
19 because those dotted lines would create lots that
20 couldn't be lots. They were at best proposals.

21 Now, not only do we have all these legal
22 arguments, let's take a look at what actually
23 happened. The property was sold as one lot by
24 Carmen Ward. The property was sold as one lot by
25 the Meeses. And one survey was given to Mr.

1 Dicks as he purchased the property from the
2 Meeses. He didn't get any of this stuff
3 (indicating). He had to go find that with his
4 digging.

5 Now, he got a survey attached to the
6 Meeses' deed that had it as one lot. He was
7 going to build a house and live there on one lot.
8 He paid \$175,000 for the piece of property. As
9 Mr. Robert Dicks says, real estate was good at
10 the time. The Meeses paid 145,000 for it. Now,
11 come on. Who is kidding who? He's turned the
12 lots into \$25,000 a piece. Let's don't kid each
13 other. The operative document here is the deed
14 he got with the survey on it which showed one
15 lot, which is what the Meeses had.

16 But let's talk about inferences from what
17 she testified to. We keep talking 2000, 2000,
18 2000. Mr. Koutrakos is right on point. Wait a
19 minute, the lawsuit, the DeCiero lawsuit was
20 filed in 1998. Now that gets pretty close to
21 1997. And you know how lawsuits are. We are
22 talking reasonable inferences. There is usually
23 a lot of hobnobbing and conversation, talk is
24 going on before we end up in a lawsuit. That's
25 why Leigh Meese got up here and told the truth.

1 Hey, there were issues. I knew there were
2 issues. But to tell you exactly when I knew
3 them, I can't tell you.

4 Now, let's talk about burden of proof on
5 the Shelter Rule. We have got actual knowledge
6 without question. Now, who is going to be able,
7 who has the duty under the Shelter Rule to take
8 advantage of what -- let's all face it, we all
9 cringe a little at the injustice of the rule.
10 That is, if applied this way, I knew I couldn't
11 do it. Now I know they claim they could anyway.
12 I understand that and I don't want to denigrate
13 that part of their argument. They claim that the
14 '72 doesn't stop it. I think that's an absurd
15 argument because the grantor, if you are going to
16 let anybody be the grantor then you wouldn't have
17 any restrictions. You have got to read that
18 document at the time it was created and she was
19 the grantor. All those arguments to me don't
20 make any sense. But if you're going to avail
21 yourself under this law that rankles us all a
22 little bit, that is, I knew I couldn't do it but
23 the person in front of me didn't know it so I'm
24 going to do it anyway.

25 Now, the theory there is, hey, we want the

1 free exchange of property. We don't want to be
2 going back in title blah, blah, blah. But I say
3 this, and I believe there are cases decided in
4 that area, and there aren't that many of them,
5 all stand for this proposition. Buddy, your
6 purchaser better have known nothing. He better
7 be clean as a whistle because you're getting
8 ready to step in their shoes.

9 Now, that's where they have the burden.
10 They have got to show that the bona fides and
11 original purchasers were there, not me. Because
12 I have got the actual knowledge over here. So
13 they're trying to undo that fact.

14 Now, here is the thing. And I read it to
15 him and he admitted it and I could read it to you
16 again, but you're so beautiful you wrote it down.
17 There is no question about this. Jay Dusenbury
18 testified that he told the Meeses, David and
19 Leigh Meese, that it didn't appear in the chain
20 of title but there was, quote, "a strong
21 possibility," that those restrictions affected
22 the property they were buying. Now that turns
23 him into something other than a bona fide
24 purchaser for value, as far as I'm concerned.

25 In fact, he testified that they made that

1 information available to Mr. Dicks. Now, not
2 only do they do that, they give him a survey they
3 requested that it turns up being one lot in the
4 deed that they give him.

5 And if you're going to prove bona fide
6 purchaser for value and step in their shoes,
7 don't tell me that Mr. Meese, who couldn't
8 remember this and couldn't remember that and
9 doesn't really recall, you know, and Mrs. Meese,
10 I'm not sure, I know there was an issue, and we
11 have got the lawsuit being filed and her purchase
12 right in there at the same time. Her lawyer
13 testified he told them there was a strong
14 possibility they're not bona fide purchasers.
15 That's their best argument, in my opinion. It
16 shocks me that our law would allow a shelter like
17 this. But Mr. Koutrakos has educated me on that
18 point and so has the Court of Appeals.

19 But I think it came back let's look and see
20 if we're really dealing with totally unaware
21 purchasers, purchasers that are pure as the
22 driven snow, got no reason to think or look or
23 make any kind of decision or wonder and look.
24 They haven't proved that part. There are too
25 many issues.

1 Her own lawyer said he told her it was a
2 strong possibility. She can't tell you when she
3 knew it. She does tell you she knows there was
4 an issue and she was involved with all this
5 litigation.

6 So our position is that when you review all
7 of our 12 exhibits, and when you zero in on the
8 deed that the Meeses gave Mr. Dicks, when you
9 consider the responsibility to prove bona fide
10 purchaser for value and where that comes, you
11 will be led to the decision.

12 And I'll say this, the Court of Appeals has
13 never had the benefit of the information you have
14 got. That's what they wanted. They wanted this
15 to come back. They wanted to hear Mr. DeCiero
16 testify, they wanted to hear Mr. Dicks testify,
17 find out what this is. And when we have flushed
18 this out, I'll tell you this, Carmen Ward, it's
19 clear, was a grantor. Carmen Ward wanted to
20 preserve this part in its natural state. And I
21 say that, some evidence I can't comment on, I
22 comment on paragraph 8, I comment on her
23 concessions in the '72 Order, I comment on her
24 selling it as one lot, I comment on the Meeses
25 selling it as one lot, I comment on her rejection

1 of that map, I comment on the survey that was
2 attached to the property that was transferred to
3 Mr. Dicks, I comment on the fact that he said, "I
4 dig. I dig. I go back and look. I go back and
5 look." What we are doing is trying to go back
6 and reconstitute what is plain language.

7 What is that plain language? Nobody can
8 change what was intended to be one big lot except
9 me. And if I don't change it, once I sell it, it
10 could never be changed that way again.

11 We feel like when you consider all of the
12 evidence, that you will rule that Mr. Dicks
13 cannot subdivide that property into seven lots,
14 I think he said some of them will be as little as
15 a quarter of an acre, and destroy the density of
16 the Long Bay subdivision.

17 Thank you very much.

18 THE COURT: I want to ask you one
19 question, Mr. Koutrakos.

20 MR. KOUTRAKOS: Yes.

21 THE COURT: On this document you wanted
22 me to take judicial notice of, the section you
23 wanted me to take judicial notice of was not
24 adopted until December 17, 2002.

25 When did your clients purchase this

1 property?

2 MR. KOUTRAKOS: They purchased it in
3 2003. Now, I could try to get the older
4 regulations. I tried. If you want older
5 regulations that are in place --

6 THE COURT: No, that's okay. I just
7 wanted to make sure it was before your clients
8 purchased the property. Thank you very much.

9 Anything further?

10 MR. BRITTAIN: No, ma'am. Thank you
11 very much.

12 MR. KOUTRAKOS: No. Thank you, your
13 Honor.

14 THE COURT: Thank you very much. We're
15 adjourned.

16 I think I have e-mails for both of you.

17 MR. BRITTAIN: If not, I'm
18 tommy@brittainlawfirm.com.

19 MR. KOUTRAKOS: Your Honor, if I may
20 real quick. This whole burden of proof issue of
21 what I can say and what he can say, I have a
22 counterclaim and I have the burden of proof on
23 the Shelter Rule, I should have the last word on
24 the Shelter Rule.

25 MR. BRITTAIN: No way, your Honor.

1 I've got the overall burden of proof. He made an
2 argument, I made an argument and that stuff was
3 said. I'm not going to sit here and let him make
4 another argument.

5 MR. KOUTRAKOS: I just want to respond
6 to his point.

7 MR. BRITTAIN: No, sir.

8 MR. KOUTRAKOS: I'm just
9 suggesting that -- I'm not familiar with the
10 rule. If he has the burden of proof I go first,
11 he goes second. But if I have the burden of
12 proof, I can't go second? The first thing he
13 said is he has the burden of proof.

14 MR. BRITTAIN: I have the overall
15 burden of proof.

16 MR. KOUTRAKOS: I'm just making that
17 point.

18 MR. BRITTAIN: You made a good
19 argument.

20 THE COURT: You certainly did. In a
21 closing argument regardless, in a trial, I mean,
22 you have got to have a closing point at some
23 point.

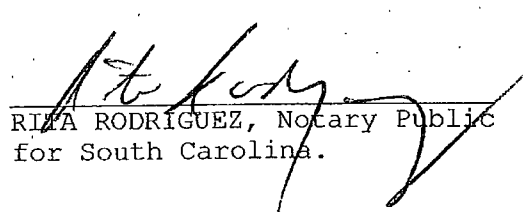
24 MR. KOUTRAKOS: Sure. That's right.
25 Thank you very much.

1 THE COURT: Thank you very much. We
2 are adjourned.

3 - - - - -
4 (Time noted: 10:32 a.m.)
5 - - - - -

1 STATE OF SOUTH CAROLINA :
2 COUNTY OF GEORGETOWN : SS: CERTIFICATE
3
4

5 I, RITA RODRIGUEZ, a Notary Public for
6 South Carolina, do hereby certify that the
7 foregoing transcript is a true and correct
8 transcript of the proceedings had before
9 Judge Cynthia Howe, Master-In-Equity, for
10 Horry County, South Carolina, at the Conway
11 County Courthouse, 1301 Second Avenue, Conway,
12 South Carolina, on Wednesday, the 13th day of
13 April, 2011.
14

15
16 
17 RITA RODRIGUEZ, Notary Public
18 for South Carolina.
19

20 My Commission expires October 4, 2015.
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

Case No. 2004-CP-26-2075
Appellate Case No. 2012-212773

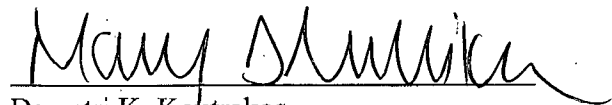
John Musick, ... Respondent

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ... Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all material designated to be included by any of the parties and not any other material. I further certify that the documents included in the Record on Appeal are in compliance with the August 13, 2007 Order of the South Carolina Supreme Court.



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Attorneys for Appellants

April 29, 2013

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
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APR 30 2013

SC Court of Appeals

John Musick, ...

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ... Appellants.

CERTIFICATE OF SERVICE

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson LLC, Attorneys for the Appellants, do hereby certify that, on this date, I caused to be served the **Record on Appeal** upon Respondent's counsel, by depositing a copy of the same in the United States mail, with proper first-class postage affixed thereon, addressed as follows:

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KATHLEEN S. ROMERO

April 29, 2013

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