ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Case No. 2013-CP-10-4511

County of Charleston, Respondent,
v.
Walter G. McAdory, Landowner, and Branch Banking and Trust Company and South Carolina Electric & Gas Company, Other Condemnees,
Of Whom Walter G. McAdory is the Appellant.

AMENDED RECORD ON APPEAL

Abigail B. Walsh, Esquire
Christopher L. Murphy, Esquire
Williams & Walsh, LLC
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Charleston, SC 29412
(843) 722-0157
Attorneys for Appellant

Joseph E. Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney
Charleston County Attorney's Office
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North Charleston, SC 29405
(843) 958-4019
Attorneys for Respondent

RECEIVED
OCT 29 2014
SC Court of Appeals

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Plaintiff's Counsel: Joseph E. Dawson, III, County Attorney
Bernard E. Ferrara, Jr., Deputy County Attorney
Bradley A. Mitchell, Assistant County Attorney
Johanna S. Gardner, Assistant County Attorney

Defendant's Counsel: Abigail B. Walsh, Esquire
Christopher L. Murphy, Esquire

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-4511

County of Charleston
PLAINTIFF

Walter G. McAdory, Landowner, and Branch Banking and Trust Company, Other Condemnee
DEFENDANTS

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
2013 OCT 18 AM 11:54
JULIE J. ARMSTRONG
CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This condemnation cause of action came before the Court for a trial by jury on October 16th and 17th, 2013. All issues were tried and a verdict rendered in favor of the Defendant/Landowner in the amount of Sixty-Three Thousand One Hundred Fifty-Eight Dollars and Zero Cents ($63,158.00). The Court required post-trial motions. Post-trial motions were heard and respectfully denied.

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NOV 22 2013
SC Court of Appeals

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$

If applicable, describe the property, including tax map information and address, referenced in the order.

RECEIVED
NOV 22 2013
SC Court of Appeals

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest.

SCRCP Form 4C (12/2011)

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2128
Judge Code

10/17/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____day of _____, 20____to attorneys of record as follows:

Bradley A. Mitchell, Esquire
Bernard Ferrara, Esquire

ATTORNEYS FOR THE PLAINTIFF

Abigail B. Walsh, Esquire
Christopher Murphy, Esquire

ATTORNEYS FOR THE DEFENDANTS

CLERK OF COURT

Court Reporter: Phyllis Norton and Sharon Vizer

VERDICT FORM

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON County of Charleston, Condemnor, v. Walter G. McAdory, Landowner.	)))))))))))))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-10-4511

FILED
2013 OCT 18 AM 11:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

VERDICT

We, the jury, unanimously find for the Landowner in the amount of

$63,158.00 Sixty three thousand one hundred fifty eight $ 00/100 dollars as just compensation.

Please sign and date.

M. Sharon Bartshi
Foreperson

October 17, 2013

Please notify Bailiff(s) when you have completed your deliberations.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10- _____
County of Charleston, Condemnor, vs. Walter G. McAdory, Landowner, and Branch Banking and Trust Company, and South Carolina Electric & Gas Company, Other Condemnees.	)	**CONDEMNATION NOTICE AND TENDER OF PAYMENT**

FILED
2012 JUL 11 AM 9: 35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE LANDOWNER WALTER G. McADORY, ABIGAIL B. WALSH, ESQUIRE, ATTORNEY FOR THE LANDOWNER, AND OTHER CONDEMNEES NAMED ABOVE

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

1. The County of Charleston, the Condemnor, is a public body corporate and political subdivision of the State of South Carolina, and seeks to acquire the real property described herein for public purposes.

2. Walter G. McAdory is named as the Landowner in this action by virtue of that certain Limited Warranty Deed from MMC Investments, LLC, to Walter G. McAdory dated January 21, 2011, and recorded January 25, 2011, in Book 0168, Page 129,

in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

3. Branch Banking and Trust Company is named as an Other Condemnee by virtue of that certain Mortgage of Real Estate by Lex Tech Automotive, LLC, mortgagor, and granted to Branch Banking and Trust Company, mortgagee, dated January 21, 2011, and recorded January 25, 2011, in Book O168, Page 130, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

4. South Carolina Electric & Gas Company is named as an Other Condemnee in this action by virtue of that certain Indenture between James E. Smoot, Herbert Grazzle by A.L. Smoot and South Carolina Electric & Gas Company, a South Carolina corporation, dated July 29, 1964, and recorded December 18, 1964, in Book V81, Page 332, in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina.

5. The description of the real property which is the subject of this action is as follows:

> All that parcel or strip of land, in fee simple, containing 0.03 of an acre (1,287 square feet) of land, more or less, and any and all improvement thereon, owned by Walter G. McAdory, shown as the "Area of Acquisition" on Exhibit "A", attached hereto and made a part hereof, between approximate survey stations 35+00 and 36+00, left of Folly Road (SC-171), Charleston, South Carolina.
>
> Tax Map Parcel Number 425-02-00-191

6. The County of Charleston is vested with the power of eminent domain pursuant to Section 24-9-30(4), Code of Laws of South Carolina, 1976, as amended.

7. The real property sought herein is to be acquired for public purposes, more particularly for the construction of a section of Intersection Improvements at SC Route 171 (Folly Road) and Road S-10-28 (Camp Road) in Charleston County, South Carolina.

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

9. The County of Charleston has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

10. Project plans may be inspected at the office of the County of Charleston, RoadWise, 4401 Belle Oaks Drive, Suite 105, North Charleston, South Carolina 29405.

11. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING DAMAGES TO BE THE SUM OF FIFTY ONE THOUSAND SIX HUNDRED SEVENTY AND 00/100 ($51,670.00) DOLLARS AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

12. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instrument necessary to convey to the Condemnor the property interests and rights described herein above. The request

and agreement must be sent first class certified mail with return receipt requested or delivered in person to the Condemnor at the Charleston County Attorney's Office, Attention: Bernard E. Ferrara, Jr., Deputy County Attorney, Bradley A. Mitchell, Assistant County Attorney, Lonnie Hamilton, III Public Services Building, 4045 Bridge View Drive, North Charleston, South Carolina 29405. If no request and agreement is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

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

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

15. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner.

That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has a right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

16. THEREFORE, IF THE TENDER IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

COUNTY OF CHARLESTON

JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
AUSTIN A. BRUNER, Assistant County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
JOHANNA S. GARDNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR THE CONDEMNOR

Charleston, South Carolina
July 9, 2012

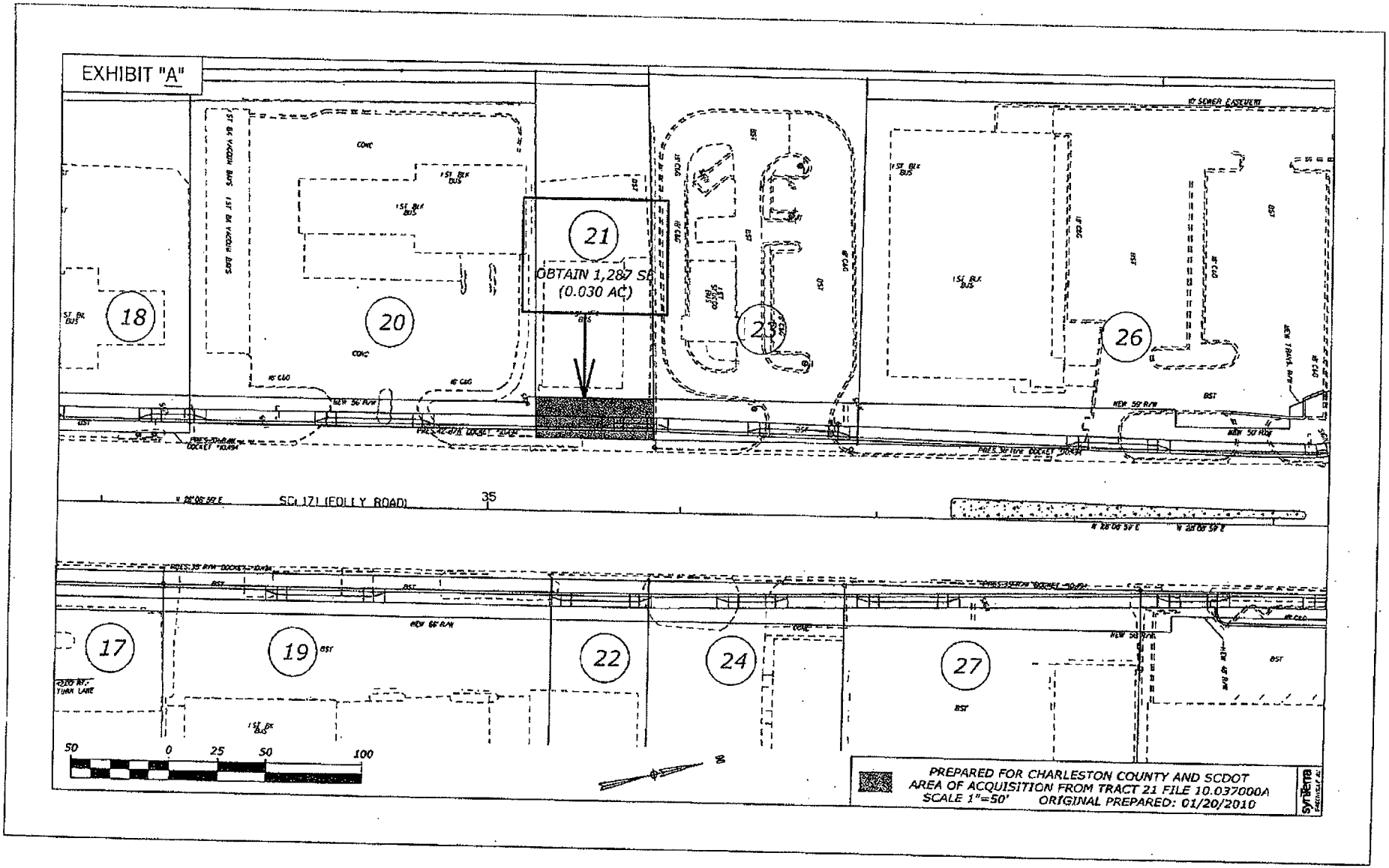
EXHIBIT "A"
21
OBTAIN 1,287 SF
(0.030 AC)
18
20
23
26
17
19
22
24
27
SC 171 (FOLLY ROAD)
35
50 0 25 50 100
PREPARED FOR CHARLESTON COUNTY AND SCDOT
AREA OF ACQUISITION FROM TRACT 21 FILE 10.037000A
SCALE 1"=50' ORIGINAL PREPARED: 01/20/2010

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF COMMON PLEAS No. 2012 CP 10 4511
3
4 COUNTY OF CHARLESTON)
5 Plaintiff)
6 versus) TRANSCRIPT OF RECORD (Partial)
7
8 WALTER G. McADORY and BRANCH BANKING AND TRUST
9 COMPANY)
10 Defendants)
11 Charleston, South Carolina
12 October 16, 2013
13
14 B E F O R E :
15 HONORABLE DEADRA L. JEFFERSON, Judge
16
17 A P P E A R A N C E S :
18 For the Plaintiff: BRADLEY MITCHELL, Esq.
BERNARD E. FERRARA, JR., Esq.
19 For the Defendants: ABIGAIL B. WALSH, Esq.
20 CHRIS MURPHY, Esq.
21 Reporter Present: PHYLLIS NORTON
22
23 HARRIET P. BENNETT
Reporter, S.C. Court Administration
24 46 Regency Oaks Drive
Summerville, S.C. 29485
25

1 I N D E X

2

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7 Mr. Ferrara 22

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1 (The within matter came before the Court on October 16,
2 2013)
3 THE COURT: Good morning, ladies and gentlemen. We are
4 going to select a jury in the case of the County of Charleston
5 versus Walter G. McAdory and Branch Banking and Trust Company
6 and S C E and G. Case Number 2012 CP 10 4511, and, actually,
7 I apologize. It is just the County of Charleston versus
8 Walter G. McAdory, and I don't know if I'm pronouncing that
9 right.
10 MR. MURPHY: Your Honor, it's McAdory.
11 THE COURT: McAdory -- I apologize.
12 Ladies and gentlemen, this is what we call a condemnation
13 case, and this is the type of case where the County is doing
14 what is called condemnation of land and a jury is impaneled
15 to determine the value of that property for public purposes.
16 Before we begin jury selection, we're going through a
17 little process that is called voir dire which is a legal term
18 meaning that I will ask you some questions so the attorneys
19 can more effectively exercise their preemptory challenges in
20 jury selection.
21 If a question applies to you, please stand and in a loud
22 and clear voice give us your name, your juror number and an
23 answer to the question as applicable.
24 Remain standing until the Court has completed question-
25 ing you.

1 Before we begin that process, I would ask counsel for the
2 County to stand and introduce themseles, as well as anyone
3 assisting them in the trial of this case, as well as anyone
4 else who practices law in their office.
5 Then counsel for the Defendant will stand and introduce
6 themselves and anyone assisting them in the trial, as well as
7 the members of their law firm.
8 You may proceed.
9 MR. FERRARA: My name is Bernard Ferrara, and I am the
10 Chief Deputy County Attorney for Charleston County. I pract-
11 ice law with other attorneys for Charleston County.
12 MR. CRITER: I'm Chuck Criter. I am a real estate ap-
13 praiser.
14 THE COURT: Is there anyone else in your office?
15 MR. CRITER: No one else in my office.
16 THE COURT: I mean the County Attorney's Office.
17 MR. FERRARA: Oh, I'm sorry. The County Attorney is a
18 gentleman named Joseph Dawson. Other attorneys in the office
19 include Austin Bruner, Assistant County Attorney, Joanna
20 Gardner, Assistant County Attorney, and Ed Nisely, Assistant
21 County Attorney. Thank you, Your Honor.
22 THE COURT: Counsel, you may proceed.
23 MR. MURPHY: Thank you, Your Honor. My name is Chris
24 Murphy, and I practice in the Law Firm of Williams and Walsh.
25 One of my law partners is Abigail Walsh, and I have another

1 law partner, Lauren Williams.

2 This is Mr. Glenn McAdory.

3 THE COURT: Ladies and gentlemen, I apologize. I am

4 Deadra Jefferson. I am one of your resident Circuit Judges

5 for the Ninth Circuit.

6 The Ninth Circuit is made up of Charleston and Berkeley

7 Counties.

8 If any of the questions applies to you, please stand and

9 in a loud and clear voice give your name, your juror number,

10 the answer to the question that is applicable, and remain

11 standing until the Court has completed questioning you.

12 Is there any member of the panel related by blood or mar-

13 riage to anyone who is employed with the County of Charleston

14 or Walter McAdory? If so, please stand at this time.

15 (No response from jurors)

16 Does any member of the panel have a close personal or a

17 social relationship with anyone who is employed with the

18 County of Charleston or Mr. Walter McAdory? If so, please

19 stand at this time.

20 (No response)

21 The following is a list of potential witnesses in this

22 case. I would ask you to listen very carefully.

23 Charles F. Criter; Peter Valiquette; Walter G. McAdory.

24 Is there any member of the panel related by blood or mar-

25 riage to any of the people that I just listed, or does anyone

1 have a close personal relationship with any of those individ-
2 uals? If so, please stand at this time.
3 Has any member of the panel ever been represented by any
4 of the attorneys involved in this case or anyone in their law
5 firms? If so, please stand at this time.
6 (No response to previous questions from jurors)
7 Does any member of the panel have a close personal or a
8 business relationship, or is related by blood or marriage, to
9 any of the attorneys involved in this case or anyone in their
10 law firms? If so, please stand at this time.
11 (Juror standing)
12 Remain standing after you provide me with the informa-
13 tion. Thank you, maam.
14 JUROR: Laura McKay, Juror 242. My husband had a bus-
15 iness proposal with Ms. Walsh.
16 THE COURT: Are you in any way involved in this business?
17 JUROR: No.
18 THE COURT: All right. In the back.
19 (Another juror standing)
20 THE COURT: Yes, maam.
21 JUROR: Caroline Bonner, 231. Kevin Mitchell and my
22 child are very good friends in school.
23 THE COURT: Okay, as a result of these experiences, do
24 you all feel that you can remain fair and impartial and ren-
25 der a fair and impartial decision in this case, based solely

1 on the evidence as it will be presented and the law as the
2 Court will instruct it?
3 If you answer is yes, please take your seats.
4 Let the record reflect that all answered yes.
5 Has any member of the panel formed or expressed an opin-
6 ion about any of the issues or matters involved in this case?
7 If so, please stand.
8 (No response)
9 Is there any member of the panel aware of any bias or
10 prejudice for or against either the Plaintiff or the Defendant
11 in this case? If so, please stand at this time.
12 (No response)
13 Is there any member of the panel who has family members
14 who are employed by the County of Charleston? If so, please
15 stand at this time.
16 (No response)
17 Is there any member of the panel who was formerly em-
18 ployed by the County of Charleston? If so, please stand at
19 this time.
20 (Juror standing)
21 THE COURT: Yes, maam.
22 JUROR: Stephanie Brown, Juror Number 23. I was formerly
23 employed by the County of Charleston.
24 THE COURT: How long ago has that been?
25 JUROR: In 2009.

1 THE COURT: Please remain standing.

2 (Another juror standing)

3 THE COURT: Yes, maam.

4 JUROR: Erica Smith, 203. My husband retired from

5 the Charleston County School District.

6 THE COURT: As a result of these experiences, do you feel

7 you could remain fair and impartial and render a fair and im-

8 partial verdict in this case that is based on the evidence as

9 it will be presented to you and the law as the Court will in-

10 struct it?

11 If your answer yes, please take your seat.

12 Let the record reflect the answers were yes. Both an-

13 swers were yes.

14 Is there any member of the panel who has any immediate

15 family member or who was formerly employed by Walter McAdory?

16 If so, please stand at this time.

17 (No response)

18 Is there any member of the panel or who has any family

19 members who were employed at Lextec LLC or Gene Reed Toyota?

20 If so, please stand at this time.

21 (No response)

22 Is there any member of the panel who was formerly em-

23 ployed at Lextec Automobile, LLC, or Gene Reed Toyota? If

24 so, please stand at this time.

25 (No response)

1 Is there any member of the panel who formerly worked as
2 a real estate appraiser or real estate agent or broker? If
3 so, please stand at this time.
4 (Juror standing)
5 THE COURT: Yes, maam.
6 JUROR: I had a real estate license from 1978 to 1982.
7 THE COURT: Your name?
8 JUROR: (Name inaudible) Juror Number 74.
9 THE COURT: As a result of that experience, do you feel
10 you can remain fair and impartial and render a fair and impar-
11 tial decision in this case based on the evidence that will be
12 presented and on the law as the Court instructs it?
13 JUROR: Yes.
14 THE COURT: You may take your seat.
15 Is there any member of the panel who lives in the area
16 of 873 Folly Road in Charleston? If so, please stand.
17 (No response)
18 Is there any member of this panel who has any personal
19 knowledge of the facts and circumstances of this case? If so,
20 please stand at this time.
21 (No response)
22 Is there any member of this panel who has ever been the
23 subject of a condemnation action? If so, please stand at this
24 time.
25 (No response)

1 Is there any member of the panel who has ever been a cus-
2 tomer of Lextec Automotive LLC or Gene Reed Toyota? If so,
3 please stand at this time.
4 (Juror standing)
5 THE COURT: Yes, maam.
6 JUROR: I take my car to Lextec. I'm number 115.
7 THE COURT: You said you take your car to Lextec and your
8 number. What is your name?
9 JUROR: Christina McDonald.
10 THE COURT: Please remain standing.
11 (Another juror standing)
12 THE COURT: Yes, sir.
13 JUROR: Andrew Clark, Juror Number 35. I've bought cars
14 at Gene Reed.
15 (Another juror standing)
16 THE COURT: Yes, sir. In the back in the light blue?
17 JUROR: Juror Number 42, and we've had service there.
18 (Another juror standing)
19 THE COURT: Yes, maam.
20 JUROR: I'm Crystal Johnson, and myself and my family have
21 bought cars from Gene Reed Toyota.
22 THE COURT: As a result of these experiences, do you all
23 feel that you could remain fair and impartial and render a
24 fair and impartial verdict in this case based on the evidence
25 that will be presented and the law the Court will instruct?

1 If your response is yes, please take your seat.
2 Let the record reflect all answered yes.
3 Is there any member of this panel who has any special
4 training in real estate or real estate appraisal? If so
5 please stand at this time.
6 (Juror standing)
7 THE COURT: Yes, sir.
8 JUROR: Mack Compton, Juror 42. As an architect, I do
9 development plans for public facilities, and one of my current
10 projects is a road project. I'm responsible for managing the
11 design, permitting and some of the acquisition concerning the
12 project.
13 THE COURT: Is that on Magnolia Road?
14 JUROR: No, maam.
15 THE COURT: Okay, I was just curious.
16 As a result of your experience do you feel you can remain
17 fair and impartial and render a fair and impartial decision in
18 this case based on the evidence that will be presented and on
19 the law that the Court will instruct?
20 JUROR: Yes.
21 THE COURT: Thank you, sir. You may be seated.
22 Is there any member of the panel who is or has immediate
23 family members who are involved in developing property? If
24 so, please stand at this time.
25 (Juror standing)

1 THE COURT: Yes, sir.

2 JUROR: Dean Fowler, Juror 66. My brother in law is a
3 civil engineer and is involved in construction.

4 THE COURT: As a result of this experience do you feel
5 that you could remain fair and impartial and render a fair
6 and impartial decision in this case based on the evidence that
7 will be presented and on the law that the Court will instruct
8 you?

9 JUROR: Yes, maam.

10 THE COURT: Thank you, sir. Please take your seat.

11 Is there any member of the panel or who has a family
12 member, immediate family member, who is employed in autobody
13 repair? If so, please stand at this time.

14 (No response)

15 Is there any member of the panel -- Oh, I'm sorry, maam.
16 I apologize.

17 (Juror standing)

18 THE COURT: Yes, maam.

19 JUROR: (Name inaudible) I'm Juror Number 34. My fiance
20 has a body shop in Ravenel.

21 THE COURT: If you could just remain standing for us.

22 Is there any member of the panel who owns commercial
23 real estate? If so, please stand at this time.

24 (Juror standing)

25 THE COURT: Tell us your name and juror number.

1 JUROR: I own some property that is commercial property.
2 THE COURT: Maam, your name and number.
3 (Answer not audible)
4 (Another juror standing)
5 THE COURT: Your name and number.
6 JUROR: Number 128, Allen Basline. I own property in
7 Summerville, a liquor store.
8 (Another juror standing)
9 THE COURT: Yes, sir.
10 JUROR: Edward Slidell, 186. I have some commercial
11 land on King Street that is vacant.
12 THE COURT: Did I get everybody? As a result of these
13 experiences, do you all feel that you could remain fair and im-
14 partial and render a fair and impartial decision in this case,
15 based solely on the evidence that will be presented and on the
16 law as the Court will instruct? If your answer is yes, please
17 take your seat.
18 Let the record reflect that all answered yes.
19 Does any member of the panel know of any reason whatso-
20 ever that you could not serve as a juror in this case, with
21 particular emphasis being placed on your ability to be fair
22 and impartial both to the Plaintiff and to the Defendant in
23 the case? If so, please stand at this time.
24 (No response)
25 THE COURT: Are there any additional questions from the

1 County?

2 MR. FERRARA: No, Your Honor.

3 THE COURT: From the Defendant?

4 MR. MURPHY: None, Your Honor.

5 THE COURT: All right. Do we need an alternate or can

6 we waive the alternate?

7 MR. FERRARA: Your Honor, it's been my experience that we

8 . .

9 THE COURT: You don't have to testify.

10 MR. FERRARA: We waive the alternate.

11 MR. MURPHY: We would like to have an alternate.

12 THE COURT: We'll select one alternate.

13 Ladies and gentlemen, please bear with us for a moment.

14 We have to prepare what is called a strike sheet where you

15 are listed randomly as numbers one through 23. The numbers

16 that are used on the list do not relate to your actual juror

17 numbers.

18 You will hear numbers called during the actual striking

19 process but they are not related to your juror numbers at all.

20 We will take a ten minutes recess so we can get that

21 strike sheet and the attorneys can view them. You all can go

22 and stretch your legs for ten minutes and then we will resume

23 the jury strike process.

24 (Whereupon, the Court took a brief recess and then the

25 case was resumed)

1 THE COURT: Are you ready to proceed, Mr. Ferrara?

2 MR. FERRARA: Yes, Your Honor, I am.

3 THE COURT: Mr. Murphy, are you ready to proceed?

4 MR. MURPHY: Yes, Your Honor.

5 THE COURT: If you will give the Clerk your attention,

6 please.

7 Strikes will be four and four, and please strike by

8 the numbers on the far left. One strike each on the alter-

9 nate juror.

10 Whereupon, a jury was struck as follows:

11 Mr. Murphy for Landowner struck Juror 13.

12 Mr. Ferrara for the County struck Juror 1.

13 Mr. Murphy for Landowner struck Juror 18.

14 Mr. Ferrara for the County struck Juror 17.

15 Mr. Murphy for Landowner struck Juror 4.

16 Mr. Ferrara for the County struck Juror 9.

17 Mr. Ferrara for Landowner struck Juror 7.

18 Mr. Ferrara for the County struck Juror 15.

19 Alternate Jurors were struck as follows:

20 Mr. Murphy for Landowner struck Juror 22.

21 Mr. Ferrara for the County struck Juror 23.

22 Alternate Juror listed as Number 21 was selected to

23 serve.

24 THE COURT: Ladies and gentlemen, as your name is called,

25 come forward, bring your personal belongings, and be seated in

15

1 the jury box.

2 (Jurors selected were seated as their names were called

3 by the Clerk)

4 (Transcription Note: A juror list was not included with

5 the Reporter's log notes)

6 (Jurors not selected for the trial of the within case

7 excused from the Courtroom)

8 THE COURT: Ladies and gentlemen, please stand for me and

9 raise your right hands as the Clerk administers the oath to

10 you.

11 (Selected jurors were sworn by the Clerk for the trial

12 of the case)

13 THE COURT: I'm going to give you all a brief recess.

14 I'm sure this schedule is foreign to you all, and you may need

15 to go to the restroom or to refresh yourselves for a moment.

16 Then we will begin the case with opening arguments, the

17 Court's opening instructions, and then we will begin testimony.

18 We anticipate that we will be able to finish this case

19 today, and, worst case scenario, we will finish tomorrow mor-

20 ning if we don't finish today.

21 During the break you cannot discuss the case in any man-

22 ner whatsoever. Please do not speculate as to what it may or

23 could be about.

24 (Jurors excused from the Courtroom. The Court took a

25 brief recess, after which the matter resumed.)

1 * * *

2 THE COURT: Ladies and gentlemen, I would ask you to
3 give the attorneys your undivided attention.

4 MR. MURPHY: Thank you, Your Honor. May it please the
5 Court?

6 THE COURT: Yes, sir.

7 MR. MURPHY: Madam Forelady and ladies and gentlemen
8 of the jury, my name is Chris Murphy, and I, along with
9 Abigail Walsh, are privileged to represent Walter McAdory
10 in this condemnation action.

11 Now, I am sure a lot of you folks are sitting there
12 thinking that you are pretty unlucky to have been selected
13 for jury duty today, but if it's any consolation Winston
14 Churchill said that in times of peace the greatest service
15 a citizen could give our country is that of jury duty.

16 I would also point out that we have some law school stu-
17 dents and recent law school grads who are sitting here with
18 you today getting what is called their 403s.

19 Now, a condemnation case is not an exciting case. It's
20 not sexy. I can guarantee there has never been a movie
21 about a condemnation action and there is never going to be
22 a movie about a condemnation action.

23 But that doesn't mean it is not important. It is very
24 important to Mr. McAdory because it's dealing with his live-
25 lihood.

1 Absolutely the most awesome power our government pos-
2 sesses is the power to draft or the power to take your
3 property, and when the government exercises one of these
4 policies it must do so in the most responsible manner. It
5 is obligated to do so in the most responsible manner, and
6 the law requires the County to make Mr. McAdory whole as
7 a result of this action.
8 That is, to put him in as good a position after as he
9 was in before. It is not permitted to put him in a lesser
10 condition.
11 That is exactly why I'm here, folks. Glenn is an auto
12 mechanic. He didn't graduate from high school and he's
13 worked hard all his life. Nobody gave him anything. He
14 had to earn it, and he did.
15 He owns the property and he leases it to a company
16 called Lextech. Lextech is a single member LLC where he
17 is the sole member.
18 Now, back in 2006 Glenn started his own business, and
19 he had to rent the place because he couldn't afford to
20 purchase one. Then on January 21st of 2011 he was able to
21 purchase 873 Folly Road which was a title loan shop.
22 I'm sure you've seen these green and yellow buildings
23 before, and this was an eleven thousand sixty-four foot
24 square foot property that he paid Three Hundred Seventy-five
25 Thousand Dollars for.

1 That is roughly Thirty-three Dollars and eighty-nine
2 Cents per square foot.
3 Now, what he liked about the property is he liked the
4 parking in the front. The building is designed so you have
5 a main entrance in the front with parking. It had great
6 visability and it had very good signage.
7 And he leased the property to Lextech which had to
8 upfit it for a garage. Now, Lextech was doing great at
9 this location until last year when the County brought this
10 condemnation action.
11 Understand that the landowner had definitely no say as
12 to whether or not this condemnation action was filed against
13 him, and he had absolutely no imput in the plans. He can-
14 not stop the condemnation.
15 This condemnation action as you can see is taking the
16 front portion of the property here, this shaded area -- the
17 shaded area there is what the County is acquiring.
18 What that is doing is eliminating the signage in the
19 front and eliminating all of this part, and the County is
20 wanting to compensate him Fifty-one Thousand Dollars for
21 this taking.
22 This is forcing, as a result of this condemnation,
23 Lextech to move its location as a result of this, and you
24 are going to hear that Mr. McAdory bought this property on
25 a fifteen year plan.

1 He intended to use it as a garage for fifteen years,
2 at which time he would sell it and that would be his retire-
3 ment nest egg.
4 What we're going to say is that prior to this con-
5 demnation action the highest and best use, which is what
6 he's entitled to, as the Judge will tell you -- he is en-
7 titled to the highest and best use of his property.
8 We are saying that it was outfitted as a garage and
9 it was used as a garage. It was purchased for that purpose
10 but when you take away his parking and take away his sign-
11 age, it changes the configuration of the property and it
12 affects the use and purpose of the property.
13 We are saying that once this project is complete that
14 the highest and best use is not going to be a garage. It
15 is going to be something else. What we don't know.
16 And we're saying that because the only choice is to
17 put the parking in the back of the property, and that does-
18 n't work because you can't have customers walking through
19 the garage which is absolutely prohibited, and you don't
20 want customers going down the alleyway because it is not
21 wide enough for two cars to pass so you can't have people
22 walking up and doing with cars going by. It is simply a
23 dangerous situation.
24 Now, as for signage, he had a great sign out in front
25 of the property. As a result of this acquisition, he is

1 not going to have any signage out in front of the property.
2 Now, the County will say they have a solution, but it
3 is definitely going to put Mr. McAdory in a lesser position.
4 Now, it's said, folks, that actions speak louder than
5 words, and Lextech is moving as a result of this, and this
6 shows the highest and best use is changing after.
7 Now, once the project is complete, he is only going to
8 have one of two choices. He's either going to have to sell
9 the property at a loss, less than what he invested in it,
10 or he's going to try to lease it out, but since it is out-
11 fitted as a garage the only possible tenant is going to be
12 a garage operator. If it doesn't work for Lextech, there
13 isn't any reason to believe it would work for anybody else.
14 You would even have to rent it out at something well below
15 the market rate.
16 Now, the County cannot force Mr. McAdory to accept an
17 inferior position in the after, and that is what we believe
18 they are trying to do here.
19 Witnesses for the government are going to testify that
20 it did not utiilize the building. They did not consider
21 whether those improvements added value for the after.
22 They did not consider the effect it would have on the
23 business or the effect on the building.
24 Now, you are the conscience of the community, and at
25 the end of the day it will be your job to make Mr. McAdory

1 whole. You have to decide whether he will be in as good a
2 position in the after as he was in the before, and, in so
3 doing, you have to decide only one issue. That is, the
4 value of the whole property prior to the acquisition, be-
5 cause we agree the property after this taking is worth Two
6 Hundred Twenty-five Thousand Dollars.
7 So you will have to look at it and determine what was
8 the before value, deduct the after value, and then find
9 the just compensation which would be the difference.
10 He wants his money back. He paid Three Hundred and
11 Seventy-five Thousand Dollars for it. He believes it is
12 worth Two Hundred Twenty-five Thousand Dollars after this
13 taking which is what the County appraiser is going to testify
14 to.
15 He wants to be made whole. At the end of the day, this
16 is his only shot at being compensated. His only shot is in
17 your hands.
18 At the end of this case, we're going to ask you for
19 the amount of One Hundred Fifty Thousand Dollars, what he
20 paid for the property, less what it is worth after the
21 taking.
22 Thank you.
23 THE COURT: Mr. Ferrara.
24 MR. FERRARA: Thank you, Your Honor.
25 Good morning, ladies and gentlemen of the jury.

1 My name is Bernie Ferrara, and I'm the Chief Deputy
2 County Attorney for Charleston County.
3 Assisting me in trying this case is Brad Mitchell and
4 back in the back is Joseph Dawson, County Attorney for
5 Charleston County.
6 This is our witness, Charles Criter, and behind him
7 is the project engineer.
8 We are privileged today to represent Charleston County
9 and, as Mr. Murphy stated, this is an important matter. It
10 is a matter that is addressed in our Constitution, a matter
11 that is in the South Carolina Constitution.
12 That matter is a guarantee of the Fourteenth Amend-
13 ment -- the Fifth Amendment guaranteed by the Fourteenth
14 Amendment, and that is when the government takes private
15 property from a private person such as Mr. McAdory, and
16 that person surrenders the property, the government must pay
17 just compensation to that person, and that is why we are
18 here today.
19 Charleston County has a program called the Road Wise
20 Program. You can see its size in Charleston County. It
21 is a sign that has half of a penny and it has an insignia.
22 This is a road improvement project paid for by the half cent
23 sales tax that was passed in 2005. Those funds provided a means
24 for Charleston County to improve roads.
25 Today Charleston County has improved Johnny Dodds

1 Boulevard, Westly Drive, in downtown near the V.A. Hos-
2 pital, (inaudible) Road, McConnell Parkway. Now on the
3 schedule is the improvement of Folly Road and Camp Road.
4 The project hasn't begun yet. It's in the design
5 phase, being designed, and we're out looking at properties
6 we need to get right-of-way for the improvements to Folly
7 Road.
8 Folly Road is going to be widened from thirty-eight
9 feet to fifty-nine feet, and as a result Charleston County
10 must acquire a section of Mr. McAdory's property right in
11 here.
12 Like Mr. Murphy stated, the property before the County
13 acquires it consists of eleven thousand sixty-four square
14 feet running this way, and that is zero point two five four
15 acres, approximately a quarter of an acre.
16 After the County acquires the land, it will consist
17 of -- and I want to get this right -- point two two four
18 acres or nine thousand seven hundred seventy square feet.
19 So between those figures is what the County is acquir-
20 ing. The County is acquiring one thousand two hundred and
21 seven square feet, or zero point zero three zero acres,
22 three hundredths of an acre.
23 As I said, earlier, when the Government takes private
24 property, it must compensate the individual. That is a
25 fundamental right.

1 Charleston County and Mr. McAdory have negotiated but
2 they could not agree on an amount of just compensation for
3 the property the County is taking from Mr. McAdory.
4 When the parties cannot agree, we ask a jury to de-
5 cide, and what you all today must do here is decide what
6 is that amount of just compensation it must give to Mr.
7 McAdory.
8 When you consider the amount of land the County took,
9 what is the amount -- for the land the County took, what is
10 the value of the amount of land the County took.
11 That is the first step in determining what is just
12 compensation. Again, what the County took is one thousand
13 two hundred seven square feet of property along Folly Road.
14 The Judge is going to tell you that you are to con-
15 sider any decrease in the value to the landowner or any dimun-
16 ition to what is left.
17 If there is any decrease in the value to the main par-
18 cel, what should the landowner be compensated.
19 So there is no question that Mr. McAdory is due just
20 compensation. The question is that you must determine
21 what is that just compensation.
22 Let me tell you a little bit about how we get to how
23 the County determines an amount of just compensation.
24 As you heard from Mr. Murphy, the County arrived at a
25 determination of just compensation in the amount of

1 Fifty-one Thousand Dollars. How did the County get to that
2 point?
3 The County goes out and hires an appraiser, and the
4 evidence will show the County hired this gentlemen over
5 here, Mr. Charles Criter.
6 Mr. Criter grew up on James Island, grew up in
7 Charleston. He now lives in Greenville and is a member of
8 am appraisal firm. Mr. Criter has been an appraiser for
9 many years.
10 He holds the highest licensure of any kind of appraiser
11 you can have. I'm not sure whether you are aware of this,
12 but there are many levels of appraisers of property. Mr.
13 Criter, again, can appraise any residential property, any
14 commercial property, with the highest licensure in the
15 State.
16 You may say, well, that sounds interesting. What does
17 that mean?
18 In other words, he can appraise million dollar proper-
19 ties. There is no property in South Carolina Mr. Criter
20 cannot appraise.
21 Mr. Criter has a designation as a MAI, a designation
22 that means he is a member of the Appraisal Institute, the
23 highest designation an appraiser can achieve.
24 That means Mr. Criter took the extra step to become
25 qualified to become MAI, so when the County started the
26

1 Folly Road and Camp Road project, they asked Mr. Criter to tell
2 them what is the amount of just compensation that is due to
3 Mr. McAdory.
4 The County didn't just go out and hire somebody. It
5 hired the best in the field. That's important. That is im-
6 portant because when a private person surrenders their prop-
7 erty it's important. Important to the County and important
8 to Mr. McAdory.
9 The County is ready, willing and able to pay Mr. McAdory
10 just compensation. Unfortunately, we disagree on what that
11 amount is.
12 Again, you must determine that amount of just compensa-
13 tion. We also have here the project engineer who is going
14 to talk to you about the Folly Road-Camp Road improvement
15 project. He's going to talk about the widening of Folly
16 Road, the intersection improvements, sidewalks, bike paths,
17 medians, turn lanes added -- all that sort of design and
18 construction to help you understand about that.
19 I have this to mark as Plaintiff's Exhibit 1, and this
20 is a smaller version. Here is the subject parcel.
21 May I show it to the jury, Your Honor?
22 THE COURT: You may continue.
23 MR. FERRARA: In conclusion, I would tell you that
24 Charleston County thanks you for your service as jurors,
25 and the Judge has told you what great service you perform

1 when you serve as jurors. It is an important civic service,
2 important to the State and the County, important to Mr.
3 McAdory. We thank you.
4 When you serve as jurors you should treat everyone with
5 respect throughout the whole process, treat people the right
6 way.
7 So I would ask you to go forward under your oath and
8 do your duty, listen to the facts, listen to the evidence
9 that is placed in the record, and arrive at what you deter-
10 mine to be a fair amount of just compensation.
11 You are here today which means you have no friends to
12 reward, no enemies to punish. You are here to arrive at
13 what is just compensation.
14 In closing, at the end of the trial you will all be
15 given a jury verdict. It's kind of like a check, and
16 the form of that jury verdict might say, we, the jury,
17 award the landowner -- and you will fill that jury verdict
18 form out -- fill in an amount on that line.
19 You have heard what we've offered Mr. McAdory, and you
20 heard what Mr. McAdory has asked for. It is up to each and
21 every one of you to agree on a verdict -- it must be a unani-
22 mous decision. Each and every one of you has to agree on
23 what the amount is.
24 We hope that when you write out that check that you
25 do it carefully, do it thoughtfully, as to what is the

1 correct amount of compensation.

2 Thank you for your time and patience.

3 ---- END OF REQUESTED PORTION OF TRANSCRIPT OF RECORD ----

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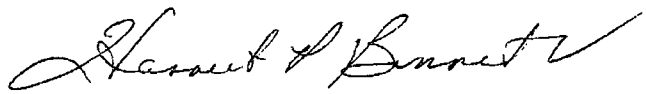
1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared from the records of
5 Phyllis Norton to the best of my ability, having been
6 heard in the Court of Common Pleas for Charleston County
7 on October 16, 2013. This is a portion of the record as was
8 was requested.

9 FURTHER, I certify that I am neither of kin nor coun-
10 sel to any party to this matter, nor do I have any interest
11 in the same.

12 July 23, 2014

13 

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
County of Charleston,	)	CASE NO. 2012-CP-10-4511
	)	
PLAINTIFF,	)	
	)	
	)	
VS.	)	PARTIAL
	)	TRANSCRIPT OF RECORD
Walter G. McAdory, Landowner,	)	
and Branch Banking and Trust	)	
Company, Other Condemnee,	)	
	)	
DEFENDANTS.	)	
	)	

Charleston, South Carolina

October 16 and 17, 2013

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

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

Bernard E. Ferrara, Jr., Esquire
Bradley Allen Mitchell, Esquire
For the Condemnor

Christopher L. Murphy, Esquire
Abigail Budd Walsh, Esquire
For the Landowner

I N D E X

(CW) - DENOTES COUNTY'S WITNESS

(LW) - DENOTES LANDOWNER WITNESS

(IC) - DENOTES IN CAMERA

PARTIAL TRANSCRIPT OF RECORD:

(Jury Voir Dire & Jury Selection - Not Included)

(Opening Statements and Closing Arguments - Not Included)

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WITNESSES

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(LW) Walter G. McAdory:

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(LW) Walter G. McAdory (IC):

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(CW) Charles F. Crider:

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(October 17, 2013)

(CW) Charles F. Crider:

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CERTIFICATION OF TRANSCRIPT -- 341

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

EXHIBITS

CONDEMNOR/PLAINTIFF NO.	DESCRIPTION	MARKED	ADMIT
1	Color photocopy - aerial	45	45
2	Color Photocopy - aerial zoom	45	45
LANDOWNER/DEFENDANT			
1	Photo	45	140
2	Photo	45	
3	Photo	46	
4	Photo	46	141
5	Photo	46	152
6	Photo	46	
7	Photo	46	
8	Photo	46	
9	Photo	46	
10	Photo	46	
11	Photo	46	
12	Photo	46	
13	Photo	46	146
14	Photo	46	148
15	Photo	47	148
16	Photo	47	150
17	Photo	47	150
18	Est. Cost Damages	47	

NO.	DESCRIPTION	MARKED	ADMIT
19	Invoice - Landscape Pavers	47	
20	Personal Bank Statement	47	
21	Accountant Leasehold Improvement	47	
22	Plat	47	48
COURT			
1	Condemnor Charge	293	
2	Landowner's Request	293	
3	Landowner's Request	294	
4	Note/Response From Jury	317	
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1

1 (WHEREUPON, jury panel enter the courtroom 10:07 a.m.)
2 THE COURT: Good morning, ladies and gentlemen. I hope
3 everybody had a pleasant trip in this morning. We are going
4 to select a jury for the case of the State of -- the County
5 of Charleston versus Walter G. McAdory and Branch Banking
6 and Trust and SCE&G, Case Number 2012-CP-10-4511.
7 And actually I apologize, it is just the County of
8 Charleston versus Walter G. McAdory. And I hope I am
9 pronouncing that last name correctly.
10 MR. MURPHY: Your Honor, it is McAdory.
11 THE COURT: McAdory. I apologize. That would make
12 sense phonetically.
13 THE COURT: Ladies and gentlemen, this is what we call
14 a condemnation case. And it is by state statute it is the
15 kind of case where when the County is doing something that
16 is called a condemnation of land a jury is entitled to
17 determine the value of the taking of that property for
18 public purposes.
19 Before we begin jury selection we are going to go
20 through a process that is called voir dire which is simply a
21 legal term meaning that I am going to ask you some questions
22 so the attorneys can more effectively exercise their
23 preemptory challenges in jury selection.
24 (JURY VOIR DIRE AND JURY SELECTION OCCURS AND JURORS ARE
25 SWORN; HOWEVER, JURY VOIR DIRE AND JURY SELECTION AND

1 SWEARING IS NOT INCLUDED IN THIS PARTIAL TRANSCRIPT.)
2 THE COURT: Ladies and gentlemen, if you would stand
3 for me please and raise your right hand so the clerk can
4 administer the oath to you.
5 (WHEREUPON, the jurors were duly sworn.)
6 THE COURT: Ladies and gentlemen, as we have already
7 indicated, we are ready to begin this condemnation case or
8 eminent domain case. I'm going to give you all a brief
9 recess to -- it has been a long -- we are use to this sort
10 of schedule. I'm sure that the schedule is foreign to you
11 all. To give you an opportunity to go to the restroom, rest
12 yourselves, stretch your legs for a moment. And then we are
13 going to begin with opening argument and the court's opening
14 instructions and then we are going to begin testimony.
15 We anticipate that we should be able to finish this
16 case today. I just do that to you for scheduling purposes.
17 Worst case scenario it will go over into tomorrow morning.
18 But we think we might be able to finish it today.
19 During this break please do not discuss the case in any
20 manner whatsoever. Please do not speculate about what you
21 think it may or could be about. I will turn you over into
22 the hands of the bailiffs. I anticipate we will be out
23 about five minutes, just enough time to give you an
24 opportunity again to stretch your legs, go to the restroom
25 if you need to. If you would go with the bailiffs, please.

1 (WHEREUPON, jurors exits courtroom approximately 11:41 a.m.)
2 THE COURT: You all can take your seats. Okay, do you
3 all have any exhibits you need to have marked?
4 MR. FERRARA: Your Honor, we have already marked two
5 for the County.
6 THE COURT: Have you given them to the court reporter?
7 MR. FERRARA: Yes, Your Honor.
8 THE COURT: Okay. Does the landowner have anything
9 they needed to have marked?
10 MS. WALSH: Yes, Your Honor, we just got stickers and
11 we are marking them.
12 THE COURT: I am sorry?
13 MS. WALSH: Yes, Your Honor, we just got stickers and
14 we are marking them.
15 THE COURT: Okay. If you all could get that
16 coordinated and then give that to the court reporter so that
17 she can pre-mark all of those exhibits and if you all agree
18 with all of those then we could just go ahead and admit that
19 without having to -- that will save us some time.
20 Is there anything else we are going to need to take up
21 before we begin opening instruction and argument?
22 MR. FERRARA: Your Honor, there are three items that
23 the County would like to raise with Your Honor before we
24 start the trial.
25 THE COURT: Okay. Let me ask one quick question.

1 Branch Banking and SCE&G have both been dismissed, correct?
2 MR. FERRARA: That is what I understand, Your Honor.
3 I'm sorry, Your Honor, Branch Banking and Trust Company is a
4 party to ---
5 THE COURT: Because they are a lien holder?
6 MR. FERRARA: Because they are ---
7 THE COURT: Okay.
8 MR. FERRARA: --- mortgage holder.
9 THE COURT: But that -- but that is just for -- they
10 are not going to be ---
11 MR. FERRARA: That's correct, Your Honor.
12 THE COURT: --- presenting anything? Okay. Yes, sir.
13 MR. FERRARA: The County anticipates - and I haven't
14 seen what exhibit it is that has been marked - is a list of
15 invoices from Lex-Tech Automotive, LLC. And you can see,
16 Your Honor, Lex-Tech Automotive, LLC, is not a party to this
17 condemnation action. The landowner is Mr. McAdory. It is
18 not Lex-Tech Automotive, LLC. Lex-Tech Automotive, LLC, is
19 a lessee of the subject property.
20 So the County is going to seek to exclude any kind of
21 evidence regarding improvements to the property since those
22 improvements appear to be asserted by the lessee, not the
23 landlord.
24 And, Your Honor, the problem that the court is going to
25 have is we don't know who is asserting these claims, the

1 landlord or the tenant. And there is a whole body of law in
2 South Carolina as to how you value a leasehold estate.
3 And these items in this invoice amounting to some
4 $70,000, first the items aren't identified except by the
5 name leasehold improvements. But there is a whole body of
6 case law in South Carolina that addresses the value of a
7 leasehold interest.
8 And if Lex-Tech Automotive is claiming some
9 apportionment or some amount of the award of just
10 compensation to McAdory then, Your Honor, that is not the
11 proceeding before you today. That is in a separate
12 proceeding, a proceeding in equity called an allocation
13 hearing between Mr. McAdory and Lex-Tech Automotive, LLC, in
14 a separate trial. And that is by statute. And I would be
15 happy to hand up to Your Honor the controlling statute if
16 you would like. I think it is 28-2 -- may I approach, Your
17 Honor?
18 THE COURT: You can just give me the number.
19 MR. FERRARA: Section 28-2-460. So to the extent that
20 Mr. McAdory wants to talk about these invoices amounting to
21 some $70,000 we object to any reference to those invoices.
22 We feel that it will confuse the jury and will be
23 prejudicial to the County's case. The issue before the jury
24 today, Your Honor, is what is the amount of just
25 compensation to be paid to Mr. McAdory.

1 In order to arrive at the fair market value of the
2 subject parcel Mr. McAdory adds this value of invoices to
3 the purchase price of the property when he bought it in
4 2011.
5 And the County finds that problematic because he is,
6 number one, like I said, $25,000 of the invoices are not
7 identified as to what they are for. But he is taking the
8 invoices and adding dollar for dollar to the value of the
9 property as if you laid payment for the price of $13,000,
10 that adds $13,000 to the market value of property. And that
11 is just not the way the fair market value standard is in
12 this state. The fair market value standard is a willing
13 buyer and a willing seller in a market free of any kind of
14 any undue influence.
15 So these invoices for improvements to the property we
16 don't know whether they increased the value or decreased the
17 value. And there is no one here to tell the jury or answer
18 that question.
19 The statute defines just compensation as what the
20 government -- the value of the dirt taken. And in this case
21 Charleston County took almost $1,300 -- 1,300 square feet of
22 property along the front of the McAdory's property on Folly
23 Road. That's what the County took.
24 The County didn't take any part of the building. The
25 County didn't take any part of the improvements. The County

1 didn't take any part of the renovations. So looking at the
2 language of the statute these invoices for improvements
3 should be disregarded. Just compensation does allow
4 compensation for any reduction in the remaining parcel, what
5 is left over, the remainder to the property.
6 And our argument is Lex-Tech, now not the landlord who
7 is receiving these invoices, is arguing that these invo- --
8 that these improvements increased the value of what is left
9 over. And that is directly in opposite to what the statute
10 says which is you're compensated for what is left over if
11 there is a decrease in that value of the remainder. So it
12 is not consistent with the statute.
13 So for the reasons stated that this notion there is
14 some dollar for dollar appreciation of $70,000 added to the
15 fair market value because they bought a -- they installed a
16 fence, they installed a lot drain and grading. They even
17 got a survey which they are including. They got plumbing
18 repairs. I mean to have the property serviced for plumbing
19 repairs of almost $2,000 and add that on dollar for dollar
20 to the fair market value that is just not the law in South
21 Carolina. They have an HVA system that they have on here
22 for $6,000. They have a repaving on here for $500. They
23 have electrical work.
24 So my point is, Your Honor, these improvements to the
25 leasehold are problematic. Again, for the reasons we don't

1 know who is making the claim.
2 Is it Lex-Tech Automotive, and if so that is a separate
3 proceeding before Your Honor in a separate time between the
4 landlord and tenant. And that separate proceeding involves
5 some allocation awarded to the tenant from the just
6 compensation that is awarded to Mr. McAdory.
7 It is problematic because it is like I said it doesn't
8 flow with the statute. And that statute number is again it
9 defines just compensation. It is Section 2 -- 28-2-370.
10 And I have a copy if you would like for me -- okay.
11 So that is the problem, Your Honor; is it the landlord
12 asserting the improvements or is it Lex-Tech. And for that
13 reason it raises problems for the County. I think it is
14 going to raise a problem for the jury. And it is going to
15 be prejudicial to the County's case where he is simply to
16 determine what is the fair amount of just compensation due
17 Mr. McAdory.
18 The County is ready, willing and able to tender a fair
19 market value of the just compensation due Mr. McAdory. And
20 these items whether they are leasehold improvements of
21 Lex-Tech should not be allowed for the jury to consider. We
22 don't know whether these items were replacement items. Our
23 argument is that they go to the condition of the property.
24 The County didn't take the building. The County didn't take
25 the renovations.

1 And when Mr. Crider, our appraiser, was asked in a
2 deposition: Tell me why you didn't appraise the
3 improvements if all is part of the project. Answer:
4 Because they were not being affected. The improvements
5 would continue so therefore the only way -- that is enough,
6 Your Honor. The improvements are not being affected. They
7 are going to continue on.
8 So with that said, Your Honor, we would like for Your
9 Honor to consider excluding them from allowing the jury to
10 consider them and should you allow them to be presented to
11 the jury that we would like some continuing objection
12 because we think this amount of $70,000 is not -- does not
13 go to the determination of the amount of just compensation.
14 THE COURT: You said you had several objections. What
15 is the other?
16 MR. FERRARA: The other objection is, Your Honor, to
17 the extent that the landlord raises any questions as to loss
18 of business pursuant to the County's condemnation of the
19 property that is not an element of damage that is
20 compensable ---
21 THE COURT: Could you repeat that again. I'm sorry, I
22 missed the first part of what you said.
23 MR. FERRARA: To the extent that the landlord talks
24 about any profit from operation of the business -- and
25 again, Your Honor, that operation of business is the tenant.

1 It is not the landlord. And to the extent that they discuss
2 that, loss of business is not an element of damage to be
3 considered in an eminent domain proceeding.
4 So we would like for you to at least be aware that
5 should that come up in trial the County will object to that.
6 But we are laying our objection before we get the matter
7 before the jury.
8 Your Honor, so we can all understand this notion of
9 the value of Mr. McAdory's property, there is a principle
10 called -- it is a fundamental foundation principle and it
11 talks about if there is an award of just compensation for
12 the taking of property that that award is looked at as a
13 whole and that award of allocation satisfies whatever
14 interests occupy that property whether it is a fee simple
15 interest of the landlord, whether it is at lease fee
16 interest of the tenant, whether it is a life estate or
17 whatever, all of those interests can look to that fair
18 market value of just compensation and make a claim for it.
19 So any claim that Lex-Tex may have, again, Your Honor,
20 is against Mr. McAdory. And that is a separate proceeding,
21 Your Honor, as I mentioned earlier.
22 The problem you have, Your Honor, is Mr. McAdory is the
23 president of Lex-Tech Automotive, LLC. It is a single
24 member LLC. He is Lex-Tech Automotive.
25 So I raised that, Your Honor, so we all understand that

1 is problematic in this case. And we move to exclude any
2 kind of reference, any kind of showing of pictures of
3 improvements to the property, any kind of introduction of
4 this evidence to the jury. I will be happy to answer any
5 questions, Your Honor.
6 I'm sorry, there is a third objection which within
7 these invoices is a -- I don't know if it is an invoice,
8 whether it is a proposed invoice, for $96,000 by an
9 architect to do some kind of reworking of the existing
10 building on the property. And the County objects to any
11 kind of introduction of this document to the jury for their
12 consideration. It is highly prejudicial. It will confuse
13 the jury.
14 THE COURT: What is it for?
15 MR. FERRARA: Pardon me?
16 THE COURT: What is it for?
17 MR. FERRARA: I think it is to show that there is a
18 figure of 96,000 out there that he will have to pay to make
19 improvements to the property. It is an architectural
20 invoice.
21 THE COURT: Make improvements for what?
22 MR. FERRARA: Pardon me?
23 THE COURT: Make improvements for what?
24 MR. FERRARA: Again, grading, paving, storm sewer,
25 building pad, hardware doors, flooring, vinyl, interior

1 painting, building electric, civil engineering,
2 miscellaneous engineering, materials and labor.
3 My point is this, Your Honor, and I will be happy to
4 let you take a look at it if you would like.
5 THE COURT: Huh-uh.
6 MR. FERRARA: I didn't want to go -- go through each
7 and every item.
8 THE COURT: I was just curious to know what it was for.
9 MR. FERRARA: But the architect is not here.
10 Charleston County can't cross-examine this individual. So
11 it contains hearsay. It -- it is highly prejudicial to the
12 County's case. And again we think that it will confuse the
13 jury.
14 THE COURT: Help me understand. You all took a 1,300
15 square feet. Was that for to extend the highway, to put a
16 new curb in, to -- what did you all take it for?
17 MR. FERRARA: Your Honor, this is Folly Road
18 (indicating). And here is -- do you mind?
19 MS. WALSH: No, go ahead.
20 MR. FERRARA: And here is the property. This is Folly
21 Beach. This is the Charleston.
22 THE COURT: I liked it better the way you had it. I
23 could see it better. Yeah.
24 MR. FERRARA: Charleston County is widening Folly Road
25 from 38 feet to 59 feet. And there is his property

1 (pointing). The blue represents where cars will pass in
2 front of the property.
3 THE COURT: So you didn't eliminate any driveways or
4 anything like that?
5 MR. FERRARA: We did not eliminate the driveway.
6 THE COURT: Okay.
7 MR. FERRARA: What we did eliminate were two parking
8 spaces up here (pointing). But within our amount of just
9 compensation offered to the landowner we cured that cost by
10 adding that into the amount of just compensation.
11 So in the after, after the acquisition by Charleston
12 County of the property, this is going to remain virtually
13 unchanged (pointing). We are going to have a four-foot bike
14 path, a five-foot sidewalk. And then the right-of-way
15 extends to this line here (pointing). And this red line
16 is literally six feet from the -- from the side of the
17 building -- from the front of the building.
18 And that raises another issue, Your Honor. If these
19 jurors are going to go out and look at the property there
20 is ---
21 THE COURT: Well, no, we haven't made that decision
22 yet.
23 MR. FERRARA: Okay.
24 THE COURT: We will see.
25 MR. FERRARA: I will hold out -- hold off on that.

1 THE COURT: No, go ahead and address it.
2 MR. FERRARA: Well, they are going to go out and see a
3 stake here (pointing). And what I would like for them to
4 understand is that stake doesn't represent where the cars
5 are going to be traveling along Folly Road.
6 Again, as I said, the cars traveling along Folly Road
7 the distance remains virtually the same as in the before.
8 It is some 20 feet from the front of that building to the
9 side of the car traveling by.
10 What the County took was this section right here
11 (pointing), 1,287 square feet; .030 of an acres, 3/100th's
12 of an acre.
13 So, Your Honor, for those reasons the architect's
14 invoice, this some $70,000 worth of leasehold improvements,
15 we would like to exclude that evidence, not let the jury
16 hear, see, or consider the evidence because it doesn't go to
17 the determination of just compensation.
18 Again, the statute says you only look at what was taken
19 by the government - we took the dirt in front - and then
20 what if any value to the remainder was it decreased, what
21 was left, is there any decrease in value to what was left.
22 And again, we cured the loss of the two parking spaces.
23 There is another issue, we cured the loss of the sign in
24 front and have that placed on the building. So we have
25 built in those costs to our offer of just compensation to

1 Mr. McAdory. And he has rejected that.
2 What Mr. -- and I don't want to get into his
3 methodology of how he arrives at his figure of just
4 compensation. But it is largely predicated, premised, on
5 adding some $70,000 to the purchase price of the property.
6 He bought the property in 2011 for $375,000. He wants
7 to add dollar for dollar these $70,000 improvements to that
8 375 and come up with some $440,000 as his starting point to
9 determine just compensation. And that is not the way it
10 works in South Carolina, Your Honor.
11 THE COURT: Okay. Would you all like to respond?
12 MR. MURPHY: Yes, Your Honor. What Mr. Ferrara did is
13 basically argued his questions, in fact the County's
14 position in this case. This is exactly why we are here.
15 Mr. Ferrara and the County don't believe this taking affects
16 any of the improvements or damages to the remainder. Mr.
17 McAdory disagrees. We believe that the improvements are
18 damaged, which is the question of fact for the jury.
19 THE COURT: How are they damaged?
20 MR. MURPHY: How -- pardon?
21 THE COURT: How are they damaged?
22 MR. MURPHY: Because the highest and best use has
23 changed from an auto repair garage to some other use. And
24 he is going to testify about that, why he has to move his
25 business as a result of this acquisition and can't use the

1 property as a garage.
2 THE COURT: What does that have to do with $70,000 in
3 invoices for improvements ---
4 MR. MURPHY: Because --
5 THE COURT: --- if he is going to move his business?
6 MR. MURPHY: Because the improvements go to the value
7 of the property in the before. You have to look at this
8 case as what was the value before and what was after. And
9 it doesn't matter if I made the improvements or somebody
10 else ---
11 THE COURT: But that is not how you calculate just
12 compensation. You have real estate experts do appraisals.
13 That is like saying because I added a $50,000 bathroom to my
14 house that it increases the value of my home.
15 MR. MURPHY: And you have that ---
16 THE COURT: If my house -- neighborhood is already
17 topped out it really doesn't matter if I added a $50,000
18 bathroom. I may have just wasted some money.
19 MR. MURPHY: And that is an argument that they can
20 make.
21 THE COURT: I don't think so. I think it is well
22 grounded in case law. You have to -- there is a way to
23 calculate fair and just compensation. Usually it is
24 battling experts who do evaluations of the property.
25 A lay person would think -- again, if the house in my

1 neighborhood is worth $100,000 a lay person would think if I
2 added a $50,000 bathroom or kitchen therefore my house is
3 now worth $150,000. It doesn't work that way.
4 MR. MURPHY: Well ---
5 THE COURT: My house may actually have diminished in
6 value. It may now be worth $90,000 which just means I made
7 a bad investment.
8 MR. MURPHY: That might be the case. But, Judge, that
9 is still a question of fact. Mr. McAdory, the landowner, is
10 entitled to testify about ---
11 THE COURT: He is entitled to testify within a
12 layperson's parameters pursuant to Rule 701 based on his
13 rational perception. But he can't go into areas beyond his
14 expertise.
15 I can say what I think my value of my property is
16 worth. But it is different when I start adding on
17 additional things to justify that opinion. It is
18 problematic. And you are going to have to connect those
19 dots for me.
20 Because the case law is very clear, which is just
21 compensation pursuant to the statute means either the actual
22 value of the land taken, any special damages resulting to
23 the remainder of the land or a reason of such taking which
24 by liberal reading I -- some of what you are saying might
25 come within that. But you would still have to prove to me

1 that it is relevant and germane. And the benefits if any
2 accruing to the remainder, the latter to be deducted from
3 the total value of the land taken and any special damages
4 found to exist.
5 But the statute is very clear and it is not ambiguous.
6 In determining just compensation only the value of the
7 property to be taken, any diminution in the value of the
8 landowner's remaining property, and any benefits which is a
9 statute that deals with, you know, the improvements ---
10 MR. MURPHY: I agree.
11 THE COURT: -- somehow accrue to the benefit of your
12 property, that gets deducted.
13 MR. MURPHY: What -- what Mr. Mc- -- first of all, Your
14 Honor, the buildings are considered an attachment to the
15 property. So that is part of the property under the law.
16 Second, is as you said, it's the value of the property taken
17 less any damages to the remainder.
18 What Mr. McAdory did was he invested -- he paid
19 $375,000 for the property to run it as a garage. He
20 invested 77 -- no, $69,000 into this property to make it
21 suitable as a garage, an auto repair shop. That has value
22 to the landowners. And that is the highest and best use in
23 the before is as a garage.
24 When that highest and best use changes, the
25 improvements lose value. And he can testify to that under

1 the law. And if there's any issues with cross-examination,
2 that can be brought out at that point.
3 THE COURT: Oh, no, you are going to have to bring the
4 architect. You are not going to be able to go into an
5 architect's report. Those are subjective opinions.
6 MR. MURPHY: Well, if Your Honor ---
7 THE COURT: They would have to be cross-examined. He
8 is not going to be able to testify as to what the architect
9 told him. He is not going to be able to be able to testify
10 what improvements the architect suggested. It is all
11 hearsay. It is not --
12 MR. MURPHY: But ---
13 THE COURT: --- based on his personal knowledge.
14 MR. MURPHY: Your Honor, I ---
15 THE COURT: He doesn't have the expertise to say ---
16 MR. MURPHY: In terms ---
17 THE COURT: --- what needs to be done to the property.
18 MR. MURPHY: In terms of hearsay it would follow the --
19 it would not fall within the hearsay. It would be an
20 exception. Because, number one, it would not be offered for
21 the truth of the matter asserted.
22 THE COURT: It is offered for its truth because you
23 want the jury to rely on it and you want them to believe
24 that these improvements need to be made and that is what it
25 cost.

1 MR. MURPHY: No, we would be offering it to show that
2 why he's -- the cost of those improvements -- well, first of
3 all we are talking about two different things here, Judge.
4 The -- the construction estimate for the $96,000 is not
5 offered for the truth of the matter asserted. It is offered
6 to show why he has to relocate his business. He was faced
7 with having to pay 96 ---
8 THE COURT: That is offered for its truth.
9 MR. MURPHY: Pardon?
10 THE COURT: That is bolstering his opinion that he has
11 to move it. It is offered for its truth. You have some --
12 he is relying on someone else's opinion as to why he says he
13 has to move his business.
14 MR. MURPHY: Right, and the case law says if he's -- it
15 is not hearsay if it is because he is taking a certain
16 action.
17 THE COURT: But the court -- it is hearsay. It is
18 being offered for its truth or you wouldn't want to have it
19 admissible. It would have no value to you otherwise.
20 MR. MURPHY: I disagree, Your Honor.
21 THE COURT: Well, that is your prerogative but.
22 MR. MURPHY: All right.
23 THE COURT: It is offered for its truth. I rarely
24 find -- I rarely see lawyers offer anything that is not
25 offered for its truth. It is very rare that someone else's

1 out of court statement is not hearsay.
2 MR. MURPHY: It would also ---
3 THE COURT: Or that it would constitute bolstering.
4 You wouldn't be offering it any -- for any other purpose.
5 It would have no value to you otherwise.
6 MR. MURPHY: And it would also come in under the
7 business exceptions record, Your Honor.
8 THE COURT: It is not a business record. It is a
9 subjective opinion. It is not records that are kept in the
10 ordinary course of business to verify or keep some sort of
11 record that is relied on by the public or by -- or for a
12 business entity.
13 He provided an opinion for a price. It is subjective.
14 If you got four or five other architects they would have
15 different opinions.
16 It is no different than a doctor providing subjective
17 opinions. Of although we have an exception for that, but
18 that is only for diagnosis and treatment.
19 And those things -- those statements that are subject
20 to veracity because people aren't going to make them up and
21 the doctor is generally not going to make up somebody saying
22 I have pain in my shoulder, I have whatever. But once a
23 doctor goes on to say that, I think that report is
24 malingering. I don't think they are telling me the truth or
25 I don't think that's -- that they are necessarily being

1 forthcoming or that their range of movement does not verify
2 or corroborate what they say their lack of range of movement
3 is. All that moves into the subjective territory which has
4 to be subject to cross-examination.
5 MR. MURPHY: And what -- if I may, Your Honor,
6 Judge, ---
7 THE COURT: Uh-huh.
8 MR. MURPHY: --- this is not an architect's invoice.
9 It is a construction invoice. Mr. McAdory is going to
10 testify ---
11 THE COURT: No, that's -- that's even -- it's still
12 hearsay. It is still somebody else's subjective opinion
13 about work that needs to be performed.
14 MR. MURPHY: Okay, that goes to the construction folk's
15 estimate. And I would just ask if we can lay a proper
16 foundation at the correct time.
17 THE COURT: You can try. But I can tell you -- I am
18 giving you a heads up. There is no foundation you can lay
19 to get in somebody's subjective report on opinion.
20 MR. MURPHY: In terms of protecting the record then
21 would you agree that we would note our exception to allowing
22 this ---
23 THE COURT: These are all in limine. You need to
24 protect your own record. The court is not an advocate. It
25 is not my job. If you don't make an objection, you

1 don't ---
2 MR. MURPHY: I understand that, but the only ---
3 THE COURT: -- do what you need to do.
4 MR. MURPHY: I understand that, Judge. But the only
5 way we protect the record then is by making it -- attempting
6 to offer it through the witness.
7 THE COURT: Do whatever you think you need to do. I am
8 just telling you in advance so you won't be surprised that
9 you didn't have an opportunity to have the person present.
10 MR. MURPHY: Very well. Okay. That goes to issue
11 number three. Issue number one and two there is no -- we
12 are not claiming any leasehold interest here. All we are
13 claiming is that there was improvements made to the building
14 which added value to the building and as again the highest
15 and best use is as a garage. The highest and best use is
16 changing therefore he -- those improvements -- or that
17 therefore the remaining property is damaged ---
18 THE COURT: But that he made the improvements ---
19 MR. MURPHY: Yes.
20 THE COURT: --- or did Lex-Tech make the improvements?
21 MR. MURPHY: Lex-Tech and him are the exact same thing.
22 It is a single member LLC. It is a tax -- or pass through
23 taxation. It is money out of his pocket or and it
24 doesn't -- or directly money out of his pocket because he is
25 Lex-Tech, Your Honor.

1 And again, it doesn't matter who made the improvements
2 to the property. If there were improvements to the
3 property, he owns the building. And that goes to his value.
4 We are not talking about any lease ---
5 THE COURT: No, we are talking about a standing issues.
6 We are talking about a true property -- who has the true
7 interest in it.
8 MR. MURPHY: He is the ---
9 THE COURT: And that would be like -- that would be
10 almost like -- they are separate entities. Under the law
11 there is -- unless you are saying he is basically
12 fraudulently not running his company the way he is supposed
13 to pursuant to the LLC statute. And I doubt that's what
14 you're trying to tell me.
15 They are separate entities in the law. Of course an
16 entity needs a person to run it. But I don't think a
17 corp- -- I don't think you get to come in and claim the
18 interest of a separate legal entity when they are not a
19 party.
20 MR. MURPHY: We are not claiming those, Judge. We are
21 not calculating any leasehold interest at all or any loss of
22 leasehold interest at all. That is not an issue here, okay.
23 The issue is what is the value of the total property
24 prior to the acquisition. Mr. McAdory is going to testify
25 about that. He is then going to testify what is the value

1 after the acquisition.
2 THE COURT: I think he can do that. But I don't
3 think -- I don't necessarily think he gets to add these
4 invoices in to bolster that opinion. Because he has to have
5 spent the money, not the company. The company is not a
6 party.
7 MR. MURPHY: Your Honor, if I may, those were permanent
8 improvements to the building. They ---
9 THE COURT: I think as a lay person he can testify as
10 to what he thought his property was worth before and what he
11 thought it was worth after. Probably more prudent to have a
12 real estate person say that in some level of expertise based
13 on comparables. That that is generally how it is done.
14 But he certainly can testify -- like I said, I can come
15 in and tell you that I think my house is worth a half a
16 million dollars and I thought it was worth -- before this
17 happened my property was worth $500,000 and now after this
18 happened I think it is worth $200,000. I think the law
19 allows you to do that. But I don't think you get to bolster
20 your opinion based on extrinsic proof that may or may not
21 meet the elements of the requirements of the rules of
22 evidence. And I am going to have to see.
23 MR. MURPHY: I'm sorry, you have to see or ...?
24 THE COURT: I still have to see.
25 MR. MURPHY: Okay.

1 THE COURT: Motions in limine are not final. And I
2 generally don't rule on them at all until I have heard the
3 evidence ---
4 MR. MURPHY: Very well.
5 THE COURT: --- in the case because I don't know how it
6 is going to develop. Because oftentimes -- probably 99.9
7 percent in the time what's told to me in a motion is not the
8 way it develops during testimony. And I don't know.
9 But I can tell you that an LLC is a separate entity and
10 it operates separately. It is supposed to operate the way
11 the statutes and body of law say it is supposed to operate.
12 Because it is a statutory creation. And he does not get to
13 come in and say Lex-Tech spent this money therefore I spent
14 this money. It doesn't work like that.
15 MR. MURPHY: Well, he can testify that -- well, I
16 mean ---
17 THE COURT: He can testify as to what he thinks his
18 property is worth ---
19 MR. MURPHY: Okay.
20 THE COURT: --- all day long.
21 MR. MURPHY: That's fine.
22 THE COURT: He can say that I think my property has
23 diminished in value. That becomes a weight issue. A lay
24 person can always say what they think their property is
25 worth.

1 MR. MURPHY: Yes.
2 THE COURT: I don't think there is anything in the law
3 that precludes that.
4 MR. MURPHY: No, I agree, Your Honor. I think we are
5 done then.
6 THE COURT: Let's see here. What time is it? Okay.
7 What use is the property being -- how is the property being
8 used now?
9 MR. MURPHY: It is a garage, Your Honor. The
10 project ---
11 THE COURT: So it has been a garage?
12 MR. MURPHY: The project hasn't started at all. So we
13 have no loss -- that is a fair issue. There is no loss of
14 business profits.
15 THE COURT: So why isn't it going to be able to be used
16 as a garage after?
17 MR. MURPHY: Pardon?
18 THE COURT: We are only talking about 20 feet of -- I
19 mean that is not even -- it's 20 feet.
20 MR. MURPHY: Yes, Your Honor.
21 THE COURT: I guess I am trying to figure out why
22 wouldn't it still be able be used as a garage.
23 MR. MURPHY: And he is going to get into that
24 testimony, Your Honor. I could give you a summary if you
25 would like.

1 THE COURT: Yeah, why don't you.
2 MR. MURPHY: Well, what happens is they are eliminating
3 all his parking in the front of his -- of his facility.
4 Okay. So the only other option is to move the parking in
5 the back of the facility. Okay.
6 And once you do that, that is problematic for customers
7 because the business is set up for having parking in the
8 front. You have the office and reception area in the front
9 of the property. You have the bays in the back of the
10 property.
11 And once you move that property -- the parking lot to
12 the back of the property it changes the configuration of the
13 building.
14 Because you can't have customers walking through the
15 store -- or the bay area, the repair shop area to get to ---
16 THE COURT: I thought they only took two parking
17 spaces.
18 MR. MURPHY: Well, we disagree. We think it took six.
19 Our position is they took six parking spaces.
20 THE COURT: You can't move them to the side?
21 MR. MURPHY: No, you cannot. There is not enough room.
22 And the problem ---
23 THE COURT: And there is plenty of property in the
24 back?
25 MR. MURPHY: There is not -- well, no. Because that

1 has to -- that is a secured area for storing the cars that
2 are being repaired or in need of repair.
3 But the problem we have, Judge, is the alley going from
4 the street back is very narrow. It can only support one
5 car. So you can't have two cars pass at the same time.
6 So the option is since you can't have customers go
7 through the bay areas, you have got to have ---
8 THE COURT: So how did they take cars in and out to be
9 test driven and all that once they have repaired them?
10 MR. MURPHY: They didn't have to have customers
11 going -- they were the only ones going back and forth. They
12 didn't have ---
13 THE COURT: Are you saying they only moved one car at a
14 time?
15 MR. MURPHY: Yes, that is what you have to do. You
16 can't do it any other way. But they didn't have their
17 customers having to go in that back area before. They would
18 park in the front.
19 THE COURT: Well, now that is diminution in value. And
20 he can testify to that. But I don't see how these invoices
21 support that.
22 What you're basically saying is I have made
23 improvements to this property and therefore I think it
24 should be added on to the property. And case law just does
25 not support that position.

1 That is just like the case where the fellow said you
2 know I have this land and therefore you -- I say the fair
3 market value of my land is worth this; but I have timber on
4 that land and I think that the value of that timber should
5 be added to that and that is my fair market value.
6 MR. MURPHY: Well, that's ---
7 THE COURT: The Supreme Court says that is not how it
8 is calculated.
9 MR. MURPHY: And I agree with that.
10 THE COURT: And this is the same concept.
11 MR. MURPHY: It's -- it's ---
12 THE COURT: Yeah, it is the concept.
13 MR. MURPHY: I mean what you are taking ---
14 THE COURT: That's like ---
15 MR. MURPHY: --- the assumption that ---
16 THE COURT: You could make improvements to your
17 property all day long. It doesn't change the fair -- really
18 as a practical matter when you talk about evaluating
19 property you are talking about the dirt. As much as that
20 hurts our feelings, because we all think our homes and our
21 property is wonderful, what you are really talking about is
22 location and dirt.
23 Because somebody could buy it and mow it down and put
24 something -- I mean and do it all the time.
25 MR. MURPHY: As they -- you are absolutely correct,

1 Your Honor. But in terms of -- what you are making an
2 assumption is that any improvement doesn't add to the value.
3 He bought the property ---
4 THE COURT: I didn't say it didn't.
5 MR. MURPHY: Well, ---
6 THE COURT: But you don't get to say dollar for dollar
7 I bought this property and I added a faucet therefore I've
8 paid $300 for that faucet and I get to add that to what I
9 paid. Lots of people overpay for property.
10 MR. MURPHY: And ---
11 THE COURT: All day long.
12 MR. MURPHY: And underpay as well.
13 THE COURT: And they end up feet up just the way you
14 end up feet up in a car. I mean lots of times people -- it
15 is just like when the market crashed. You had people West
16 Ashley paying $400,000 for houses that weren't worth but
17 $150,000. And now they are trying to unload them and they
18 can't because the fair market value has come back. But your
19 house is worth about $150,000 even though you paid 385 for
20 it; what were you thinking.
21 And that's exactly -- I mean it is no difference. You
22 don't get to say -- that would be like those people saying
23 well I added a deck and it cost me $20,000 and therefore my
24 house now is worth $20,000 more. That is not how you do the
25 calculation.

1 MR. MURPHY: But the question -- that is a question of
2 fact, Your Honor. If the ---
3 THE COURT: It is not a question of fact. It is a
4 question of law. It is a question of how you calculate
5 damages. It is an evidentiary issue. And the court as a
6 gatekeeper has the responsibility -- it can't mislead a
7 jury. And that is not the basic principle or tenant ---
8 MR. MURPHY: But ---
9 THE COURT: --- of how you calculate ---
10 MR. MURPHY: We are not ---
11 THE COURT: --- fair market value.
12 MR. MURPHY: Understand. But we are not attempting to
13 mislead the jury. We are saying ---
14 THE COURT: No, it is my job to make sure you don't.
15 MR. MURPHY: I understand that.
16 THE COURT: Because I have to instruct them. And then
17 when I have to instruct them then I have to clean it up.
18 And it is better to do it at the front end. You don't get
19 to say -- again, I may not be using the best example. But I
20 don't get to say because I had a house for 20 years and I
21 added all these things to it -- if the County comes through
22 and -- it is no different than when they condemned all that
23 property on Orleans Road to do the mall and cut through and
24 do 526 and everything else. You don't get to say I owned my
25 house for 25 years, when I bought it it was worth 80,000,

1 I've put 100,000 in improvements in it and now my house is
2 worth $180.000
3 MR. MURPHY: And I think we are -- this might be we are
4 talking apples and oranges, Your Honor. On your example you
5 are talking about a house as opposed to a house.
6 THE COURT: It doesn't matter. Commercial property.
7 Either way. It is all the same.
8 MR. MURPHY: But what we are doing, Judge, is we bought
9 this. It was a title loan store. The highest -- they
10 changed -- they made these improvements to change the
11 highest and best use to a garage. Okay. And what we are
12 saying is the improvement adds ---
13 THE COURT: We are not -- we are talking about
14 different -- we are talking about the same thing, which is
15 the highest and best use. How you calculate it however is
16 not supported by the way you contend you think you should be
17 able to ---
18 MR. MURPHY: But ---
19 THE COURT: -- which is I get a dollar for dollar value
20 for every improvement I made. The law just doesn't support
21 that.
22 MR. MURPHY: But the improvements are -- the value of
23 the improvements is determinative of the highest and best
24 use. So if ---
25 THE COURT: We're talking about fair market value and

1 diminution of value. How you show it is something else.
2 MR. MURPHY: That's ---
3 THE COURT: You don't get to say I added $80,000 in
4 improvements and therefore the property is worth $80,000
5 more.
6 MR. MURPHY: The law entitles us to the highest and
7 best use of the property.
8 THE COURT: That's correct. But how you show it is
9 totally another matter.
10 MR. MURPHY: And what he had to do was make these
11 improvements to bring it to the highest and best use of that
12 property. And he converted this title loan to a garage.
13 And the highest and best use was as a garage. Therefore he
14 is entitled to that market value as of ---
15 THE COURT: He is entitled to the fair market value of
16 what his property is.
17 MR. MURPHY: That is correct, Your Honor.
18 THE COURT: And what he -- but he doesn't get a dollar
19 for dollar credit of every dime he put in his property. It
20 doesn't work like that. The law just doesn't support that
21 type of calculation.
22 That would turn condemnation law -- really it would
23 turn real estate valuation law on its head. Because it just
24 doesn't work that way.
25 MR. MURPHY: But Judge ---

1 THE COURT: If that were the case I mean people would
2 buy property and say I paid $100,000, I put 400,000 into it
3 so now it is worth 500,000.
4 MR. MURPHY: And that certainly could be the case, Your
5 Honor. I mean ---
6 THE COURT: No, it couldn't be. It wouldn't be
7 supported by case law. Fair market value is fair market
8 value.
9 MR. MURPHY: I understand that, Judge. But fair market
10 value changes once you do either add or take ---
11 THE COURT: Not always.
12 MR. MURPHY: What?
13 THE COURT: Not always.
14 MR. MURPHY: And that is where we get back to the
15 question of facts because it is not always. Sometimes it
16 does. Sometimes it doesn't. That would be ---
17 THE COURT: We are talking about the same concept but
18 in the way you prove it. And I think I have been very clear
19 in what the case law required. You don't get a dollar for
20 dollar credit for every improvement you make to property.
21 It is just not supported by the way you cal- -- I don't
22 know any real estate appraiser that would come in and tell
23 you that they would say commercial or otherwise that says
24 you get a dollar for dollar improvement for every
25 improvement you make to property.

1 If that were the case you wouldn't have people to make
2 bad improvements or otherwise. You can over improve
3 property all day long. It doesn't mean you are ever going
4 to get your money back.
5 MR. MURPHY: Put people wouldn't put in ---
6 THE COURT: Yes, they do all the time. All the time.
7 People over improve all the time. And they do it to please
8 themselves. They do it for lots of other reasons.
9 For example, in a certain neighborhood if a house is
10 worth $50,000 you can put $5,000 worth of granite
11 countertops in your house; it is not going to change the
12 value of your house. You have over improved it. You are
13 never going to get your money back.
14 MR. MURPHY: I understand that. But there's also a lot
15 of improvements that are made that enhance the value of the
16 property -- of a property.
17 THE COURT: Sometimes.
18 MR. MURPHY: I agree.
19 THE COURT: It depends.
20 MR. MURPHY: Right.
21 THE COURT: But not all improvements are enhan- -- not
22 every time ---
23 MR. MURPHY: I understand.
24 THE COURT: You can over -- people over improve all the
25 time.

1 MR. MURPHY: Judge, I get that ---
2 THE COURT: People that flip houses will tell you all
3 the time we have made bad investments.
4 MR. MURPHY: I agree. And if we were putting a hot-tub
5 in this facility or luxury bathrooms, I agree with you. But
6 he was up -- he was renovating it ---
7 THE COURT: I am just using it as an analogy. Either
8 way you can still over improve, whether it is commercial or
9 real estate. It doesn't matter. You don't get a dollar for
10 dollar improvement for what you make to property.
11 You can testify as to what you believe the value of the
12 property is. You can testify as to what -- how you feel
13 your property has been diminished. But there is nothing
14 that supports you being able to say I made a dollar for
15 dollar improvement and therefore I am entitled to a dollar
16 for dollar.
17 You have to testify based within the parameters of fair
18 market value as to what the valuation of what your property
19 is and how you feel it has been diminished.
20 But it is just not supported for me to come in and say
21 I bought a piece of property -- I am going to use real low
22 values. So I am not that great at math. I bought a piece
23 of property for $50,000; I need $90,000 worth of
24 improvements and I am entitled to dollar for dollar $90,000
25 credit on that. It just doesn't work that way because the

1 fair market value of the property may not have changed from
2 $50,000. Which just means you made a bad $90,000
3 reinvestment of property that was never going to give you
4 back your value.
5 So you are going to have to figure out how you are
6 going to prove your diminution of value. We will take it as
7 it comes. I have expended as much time on this as I intend
8 to.
9 MR. MURPHY: Thank you, Your Honor.
10 THE COURT: All right. Y'all take a quick break. We
11 will resume with opening instruction and opening argument.
12 Please show your exhibits to the court reporter. Any
13 exhibits that you all cannot agree on will be marked for ID
14 only. And I need a list at the conclusion of the break so I
15 can know what you all have agreed upon and what will be
16 marked for ID only.
17 MR. MURPHY: Oh, Your Honor, also we would move to
18 sequester the witnesses.
19 THE COURT: Any exception from the condemnor?
20 MR. FERRARA: Yes, Your Honor.
21 THE COURT: Your only -- your only witness is an
22 expert, real estate?
23 MR. FERRARA: We have ---
24 THE COURT: He needs to be here to hear your client's
25 testimony.

1 MR. FERRARA: Thank you. And I will be happy to go
2 through the ---
3 THE COURT: You don't -- no.
4 MR. FERRARA: --- rule of evidence and the standards.
5 THE COURT: Experts generally -- they -- he needs to be
6 able to hear his testimony.
7 (WHERUEPON, a break was taken until 12:13 a.m.)
8 MR. MURPHY: Your Honor?
9 THE COURT: Yes, sir.
10 MR. MURPHY: Just for a matter of housekeeping. We
11 also made a motion to inspect the property, Your Honor.
12 THE COURT: I am aware of that.
13 MR. MURPHY: Yes, okay.
14 THE COURT: Did you -- did you -- did y'all just tell
15 y'all -- I'm sorry, I'm shuddering. I apologize. Give me
16 one second.
17 Yeah, what I was going to ask, you didn't file a
18 written motion regarding that; you are just making an oral
19 motion?
20 MR. MURPHY: We did not. That is correct, Your Honor.
21 THE COURT: All right.
22 THE COURT: Any exception from the County?
23 MR. FERRARA: Your Honor, no objection from the County.
24 But one of our witnesses is from Greenville, Mr. Crider. So
25 if the visit to the property could be after his testimony so

1 he can be relieved to get back to his home. We would only
2 ask to proceed in that order if possible.
3 THE COURT: We will do our best to accommodate him. I
4 assume there is no exception from the landowner?
5 MR. MURPHY: None, Your Honor.
6 THE COURT: Okey dokey.
7 MR. FERRARA: Thank you, Your Honor. You are welcome.
8 THE COURT: Did you all mark any exhibits? Did they
9 mark any exhibits?
10 (Whereupon, review with court reporter as to exhibits
11 marked.)
12 THE COURT: Plaintiff's 1 and 2 will come in without
13 objection. Landowner's 1 through 21 will be marked for ID
14 only.
15 (Plaintiff/Condemnor's Exhibit Number 1, color photocopy
16 aerial view, was marked for identification.)
17 (Plaintiff/Condemnor's Exhibit Number 1 was admitted into
18 evidence.)
19 Plaintiff/Condemnor's Exhibit Number 2, color photocopy
20 aerial zoomed, was marked for identification.)
21 (Plaintiff/Condemnor's Exhibit Number 2 was admitted into
22 evidence.)
23 (Defendant/Landowner's Exhibit 1, photo, was marked for
24 identification.)
25 (Defendant/Landowner's Exhibit 2 was marked for

1 identification.)
2 (Defendant/Landowner's Exhibit 3 was marked for
3 identification.)
4 (Defendant/Landowner's Exhibit 4, photo, was marked for
5 identification.)
6 (Defendant/Landowner's Exhibit 5, photo, was marked for
7 identification.)
8 (Defendant/Landowner's Exhibit 6 was marked for
9 identification.)
10 (Defendant/Landowner's Exhibit 7 was marked for
11 identification.)
12 (Defendant/Landowner's Exhibit 8 was marked for
13 identification.)
14 (Defendant/Landowner's Exhibit 9 was marked for
15 identification.)
16 (Defendant/Landowner's Exhibit 10 was marked for
17 identification.)
18 (Defendant/Landowner's Exhibit 11 was marked for
19 identification.)
20 (Defendant/Landowner's Exhibit 12 was marked for
21 identification.)
22 (Defendant/Landowner's Exhibit 13, photo, was marked for
23 identification.)
24 (Defendant/Landowner's Exhibit 14, photo, was marked for
25 identification.)

1 (Defendant/Landowner's Exhibit 15, photo, was marked for
2 identification.)
3 (Defendant/Landowner's Exhibit 16, photo, was marked for
4 identification.)
5 (Defendant/Landowner's Exhibit 17, photo, was marked for
6 identification.)
7 (Defendant/Landowner's Exhibit 18, estimate cost damages,
8 was marked for identification.)
9 (Defendant/Landowner's Exhibit 19, invoice - Landscape
10 Pavers, was marked for identification.)
11 (Defendant/Landowner's Exhibit 20, personal bank statement,
12 was marked for identification.)
13 (Defendant/Landowner's Exhibit 21, Accountant Leasehold
14 Improvements, was marked for identification.)
15 MR. MURPHY: Just very briefly.
16 THE COURT: Uh-huh.
17 (Counselors confer.)
18 MR. MURPHY: We would just mark Number 22, Landowner's
19 22, which is in ---
20 THE COURT: Is that without objection?
21 MR. MURPHY: --- by consent.
22 MR. FERRARA: Without objection, Your Honor.
23 THE COURT: Number 22 without objection.
24 (Defendant/Landowner's Exhibit 22, marked for
25 identification.)

1 (Defendant/Landowner's Exhibit 22 was admitted into
2 evidence.)
3 THE COURT: Number nine will be our foreperson. Do we
4 have notebooks and pencils or pens?
5 MR. MURPHY: Your Honor, Number 9 I think was struck,
6 Bartshe, Jury Number 9. Oh, I'm sorry. Go ahead.
7 THE COURT: No, Number 9 is Ms. Bartshe.
8 MR. MURPHY: No, yes, I'm sorry.
9 THE COURT: She is the first juror that was selected.
10 (Pause to check on notebooks for jurors.)
11 THE COURT: I assume the landowner will be going first
12 since they have the burden of proof?
13 MR. MURPHY: That is correct, Your Honor.
14 THE COURT: I am going to alternatively refer -- I
15 don't know how I am going to do it. I guess I could just
16 refer to y'all as landowner and County. Is there any
17 exception to that from the landowner?
18 MR. MURPHY: Just for clarification, because we have
19 the burden of proof we go first with our arguments. But in
20 terms of witness testimony the engineer would be the first
21 person called by the County to explain -- as the court's
22 witness to explain the project.
23 THE COURT: Well, it is not a court's witness.
24 MR. MURPHY: You ---
25 THE COURT: How do ya'll want to do it?

1 THE COURT: If y'all want to go in that way and you
2 agree to it, that is fine with me.
3 MR. MURPHY: Fair enough. And in terms of opening
4 arguments since the landowner goes first since we have the
5 burden.
6 MR. FERRARA: I've always felt that we go first.
7 THE COURT: What do y'all want to do?
8 MR. MURPHY: We go first, Your Honor.
9 THE COURT: Now tell me again how we are going to do
10 this ---
11 MR. MURPHY: Going ---
12 THE COURT: --- in terms of presentation and testimony.
13 MR. MURPHY: In terms of testimony the County will call
14 the engineer as the first witness. After that point we will
15 call our -- put on our case and call the landowner. He is
16 going to be our only witness. We will close. At which time
17 we will make motions. And then the County can put on --
18 call his -- call its case and put the engineer up.
19 THE COURT: Do you mean put the ---
20 MR. MURPHY: For the appraiser.
21 THE COURT: --- appraiser up?
22 MR. MURPHY: I'm sorry, Your Honor. The appraiser.
23 THE COURT: Okay. That is not anything really
24 particularly different. Okay. All righty. You can bring
25 in the jury for me please, Mr. Rivers.

1 (WHEREUPON, jury enters courtroom.)
2 THE COURT: Ladies and gentlemen, you have been
3 incredibly patient with us this morning. And we appreciate
4 it. We had some matters of law that we needed to try to
5 work through before beginning the case. It took a little
6 longer than we anticipated.
7 Oftentimes we will work through matters of law because
8 it allows the proceeding to go about seamlessly without us
9 having to stop and start. So again, we do not take your
10 time for granted and we appreciate you all being so very
11 patient with us and so generous with your time.
12 As I have explained, we are going to proceed with what
13 is called a condemnation or eminent domain cause of action
14 which is where a governmental entity condemns or eminently
15 domains the property belonging to someone else for a public
16 purpose.
17 And the law provides that when you have a case such as
18 that, that the landowner has to be compensated for the land
19 that is being taken. And it is your responsibility as
20 jurors to determine the valuation of that property that is
21 being taken.
22 So that is kind of in a nutshell the kind of case that
23 we are going to be trying today, which is a little different
24 than your average automobile accident or breach of contract
25 cause of action or all the other multiplicity of kinds of

1 civil cases that we have the opportunity to hear in circuit
2 court.
3 The first thing that will occur, ladies and gentlemen,
4 is that the attorney for the landowner will make an opening
5 argument which will be followed by an opening argument by
6 the attorney for the County.
7 I need you to keep in mind that opening statements are
8 not arguments. Arguments will come at the conclusion of the
9 case. The purpose of the opening statements is for each
10 party to outline his or her claims and the evidence which
11 they intend to present in support of those claims.
12 In other words, in opening argument the lawyers will
13 argue to you what they believe the evidence will show in
14 this case.
15 Following the opening statements each side will present
16 evidence. And again, in a condemnation case sometimes we
17 deviate a little bit from the rules of procedure in the way
18 we proceed. So first you will hear from the County which
19 will give you the scope of the eminent domain proceeding.
20 You will then -- we will then revert back to what are
21 our typical rules which is the person with the burden of
22 proof gets to go first and present their case, and then the
23 other party present their case. And then we at some point
24 will have closing arguments and the court's instructions.
25 Evidence may take many forms. It may be testimony,

1 documents, models, photographs or the like. You should pay
2 close attention to all of the evidence which is presented by
3 each party because you the jury are the sole finders of the
4 facts in this case. And no one else will be permitted to
5 weigh the evidence and render a verdict based upon it.
6 After all the evidence has been presented the attorneys
7 will make their closing arguments. And unlike the opening
8 statements the final remarks will be true arguments. That
9 is each side will emphasize certain portions of the evidence
10 and try to persuade you to agree with their version of the
11 facts.
12 Keep in mind that the opening statements as well as
13 closing arguments of the attorneys do not represent evidence
14 in this case. I would ask that you give them your undivided
15 attention but keep in mind that what they say is not
16 evidence.
17 After the arguments are finished I will explain to you
18 the law which applies to this case. You will then retire to
19 the jury room to consider the facts and the law. And once
20 you have done so you will return a verdict in favor of one
21 side or the other.
22 During the course of this trial the landowner has the
23 burden of proving his claims. He must meet this burden by
24 proving his claims by the greater weight or the
25 preponderance of the evidence.

1 What we mean by the preponderance or greater weight of
2 the evidence can be illustrated by imagining a traditional
3 set of scales. When the case begins, the scales are even.
4 After all of the evidence has been presented if the scales
5 should remain evenly balanced or if they should tip even
6 slightly in favor of the County or -- which acts as the
7 defendant in this case, then the landowner would have failed
8 to have met their burden of proof and your verdict would be
9 in favor of the County. If on the other hand the scale
10 should tip even slightly in favor of the landowner then he
11 will have met his burden of proof and your verdict would be
12 for the landowner.
13 As I mentioned earlier, although I am the only one who
14 can tell you what the law is you are the only ones who can
15 determine the facts. I do not have the right to indicate
16 how I might feel about the evidence that is presented. And
17 throughout this trial it will be my intention to be fair and
18 impartial toward each of the parties involved as well as
19 their attorneys.
20 Also, ladies and gentleman, from time to time you may
21 hear one of the attorneys object to some bit of testimony or
22 evidence which the other side is seeking to introduce. And
23 that is normal.
24 In a good trial or very active, zealously advocated
25 trial you will have many objections. So you should expect

1 that during the course of testimony and the presentation of
2 evidence.
3 Just as in sports, business or any other structured
4 activity there are certain rules that both sides must obey
5 in the presentation of evidence. These rules have a
6 definite purpose. They insure that the information you
7 receive is the most trustworthy and reliable evidence
8 available.
9 An objection is the procedure that an attorney uses to
10 call a possible violation of those rules to my attention as
11 the judge of this court. And for this reason you should
12 never hold an attorney's objection against them nor should
13 you conclude from the court overruling or sustaining an
14 objection that I favor one side or the other.
15 Also from time to time we may hear us refer to matters
16 of law that we need to take up. And sometimes we will have
17 a bench conference and you will hear a noise over your heads
18 that is designed to interfere with your hearing. That is a
19 great time-saving measure for us. And sometimes we would
20 utilize that in dealing with matters of law.
21 Other times it might be necessary for us to exclude you
22 from the courtroom while we discuss matters of law. And the
23 reason we do this is because you are the finders of the
24 facts.
25 And sometimes when I am discussing matters of law with

1 the attorneys it might be necessary for me to make some
2 comment about the facts in connection with ruling whether a
3 rule of procedure applies or a statute or an evidentiary
4 rule and for this reason we exclude you from the courtroom
5 so that in no way will you be influenced by anything that
6 the court may say or do in connection with the facts of the
7 case.
8 Also during the course of this trial you will be given
9 the opportunity to take notes. Note taking is a privilege
10 that you may choose to exercise or choose not to exercise.
11 Not everyone finds note taking helpful to them, so you
12 should not feel that you are compelled to take notes.
13 If you should decide today to take notes, please don't
14 try to record everything that is said. It is physically
15 impossible. The average person speaks at the rate of about
16 200 words a minute.
17 So as you can well imagine, even if you thought you
18 were taking it down verbatim if you were to go back and
19 listen to it you would find that you have missed words.
20 I often invert sentences and often substitute words
21 that I would commonly use or that I feel would summarized a
22 certain portion of what I am listening to. And I think the
23 average person taking notes does about the same thing.
24 So as I've explained, you are the fact finders. And it
25 is absolutely essential that you rely on your powers of

1 observation in determining the credibility and the
2 believability of witnesses who will testify in this case.
3 Please don't try to record everything that is said
4 because that could dilute your ability to observe the
5 witnesses and pass upon their credibility.
6 You may want to keep an outline of the main points that
7 are being made so that when you retire to deliberate
8 regarding this case you can allow your notes to refresh your
9 memory.
10 During breaks and recesses your notes will be left in
11 your seats. And we do this to make sure there is no
12 premature temptation to talk about something or that has
13 taken place in the courtroom or to prematurely deliberate
14 regarding the case.
15 Again I would remind you that your notes are for your
16 specific and your individual purposes. They are only to be
17 used to refresh your memory.
18 And just also as a reminder that your notes should not
19 be considered more reliable than someone else's memory.
20 Another juror's memory should be considered just as reliable
21 as notes that may have been taken by another juror.
22 Finally, ladies and gentlemen, I would ask that you pay
23 close attention to all of the evidence that is presented.
24 Because again you are the fact finders in this case. And as
25 a result, you will determine the facts in this case. And as

1 a result you will have to evaluate the credibility which is
2 simply a legal term meaning the believability of each
3 witness who testifies in this case.
4 Ladies and gentlemen, you are participating in a
5 time-tested system, and it is extremely important for each
6 of you to listen carefully to all of the evidence presented.
7 And I am sure that each of you will perform your duties
8 accordingly.
9 Before we begin with opening argument I would ask are
10 there any exceptions from the landowner to the court's
11 instructions.
12 MR. MURPHY: None from the landowner.
13 THE COURT: From the County?
14 MR. FERRARA: None from the County, Your Honor.
15 THE COURT: Thank you. Ladies and gentlemen, I would
16 ask that you give the attorneys your undivided attention.
17 MR. MURPHY: Thank you, Your Honor.
18 THE COURT: You may proceed, Mr. Murphy.
19 (OPENING STATEMENTS WERE PRESENTED APPROXIMATELY 12:32 P.M.
20 TO 12:55 P.M. THEY ARE NOT INCLUDED IN THIS PARTIAL
21 TRANSCRIPT.)
22 (Proceedings following opening statements as follows:)
23 THE COURT: Madam Forelady, ladies and gentlemen, we
24 are going to take advantage of this break to take our lunch
25 recess. We will break until 2:15.

1 During this break please do not discuss the case in any
2 manner whatsoever. Please do not have any contact with
3 anyone in our about the courthouse when you return. When
4 you return you are going to return directly to your jury
5 room and the bailiffs are going to show you how to do that.
6 Please leave your notepads in your seats.
7 And also during this break please don't do any
8 independent research of any type. That includes anything
9 that could be found on the Internet or otherwise. As the
10 fact finders you are bound to decide this case only
11 according to the testimony you hear from sworn witnesses and
12 other evidence that may be introduced during the course of
13 this trial.
14 I hope y'all have a great lunch. It is supposed to be
15 a gorgeous day. And we will see you all at 2:15. Enjoy
16 your lunch.
17 (WHEREUPON, jury exited courtroom 12:56 p.m.)
18 THE COURT: You all may take your seats. Is there
19 anything we need to take up before we break for lunch, by
20 the landowner?
21 MR. MURPHY: Nothing from the landowner.
22 THE COURT: For the County?
23 MR. FERRARA: Nothing, Your Honor.
24 THE COURT: Have a good lunch. We will see you at
25 2:15.

1 (WHEREUPON, break for lunch 12:58 p.m.)
2 THE COURT: Is the landowner ready to proceed?
3 MR. MURPHY: We are, Your Honor.
4 THE COURT: Is the County ready to proceed?
5 MR. FERRARA: Yes, Your Honor.
6 THE COURT: Please bring in the jury, Mr. Rivers.
7 Who is the first witness?
8 MR. FERRARA: Mr. Peter Valiquette for the condemnor.
9 THE COURT: Is he present?
10 MR. FERRARA: He is present, Your Honor.
11 THE COURT: Where is he?
12 (WHEREUPON, Mr. Valiquette stands.)
13 THE COURT: Okay.
14 (WHEREUPON, jurors enter courtroom 2:20 p.m.)
15 THE COURT: You may be seated. Ladies and gentlemen, I
16 hope you had a pleasant lunch recess. We are now going to
17 resume testimony.
18 You may proceed.
19 MR. FERRARA: Your Honor, Charleston County calls Peter
20 Valiquette.
21 THE COURT: Sir, if you would come to the witness stand
22 to be sworn.
23 (WHEREUPON, the witness was duly sworn.)
24 THE CLERK: Have a seat, please. State your full name
25 and please spell your last.

1 THE WITNESS: My name is Peter Valiquette.
2 PETER VALIQUETTE, having first been
3 duly sworn, testified as follows:
4 **DIRECT EXAMINATION BY MR. FERRARA OF PETER VALIQUETTE:**
5 Q. Would you tell the ladies and gentlemen of the jury
6 where you are employed.
7 A. I am an employee of the Michael Baker Corporation.
8 Q. And how long have you been employed with the Michael
9 Baker Corporation?
10 A. I have been an employee with Michael Baker since August
11 of 2005.
12 Q. All right. And before you worked with Michael Baker
13 Corporation did you enjoy employment elsewhere?
14 A. Yes, I worked for another civil engineering company
15 called PBS&J starting in May of 2004.
16 Q. All right. And where is PBS&J; is that located here in
17 Charleston?
18 A. At the time they had an office in Columbia, South
19 Carolina.
20 Q. Is that a regional firm?
21 A. It is a national firm. It has since been bought out by
22 another company.
23 Q. All right. Is this your first appearance in the
24 courtroom to testify?
25 A. In a civil matter, that is correct.

1 Q. In what other matters have you testified?
2 A. In family court a long time ago for ....
3 Q. Tell us where you live.
4 A. I live at 147 Carriage Ride Lane in Summerville, South
5 Carolina.
6 Q. Is it in Dorchester County?
7 A. That is correct.
8 Q. Not Charleston County?
9 A. I did for a while. But I have since moved.
10 Q. Did you go to high school?
11 A. No, I went to college here in Charleston.
12 Q. All right. What college was that?
13 A. I went to the Citadel.
14 Q. All right. What did you graduate with?
15 A. A bachelor of science in civil engineering.
16 Q. Okay. Well, let's talk about your job duties with
17 Michael Baker Corporation. Why don't you describe for the
18 jurors what your job duty -- what is -- what is your title
19 with Michael Baker?
20 A. My title with Michael Baker is operations manager.
21 Q. Operations manager, describe what those duties are.
22 A. Well, what I performed for Michael Baker specifically
23 as relates to a contract we had with Charleston County is
24 I -- I served as a project manager and we are acting as
25 really an extension of Charleston County staff.

1 When the transportation sales tax was passed by voter
2 referendum in 2004 the County hired my company to assist
3 them with the management of the projects that were funded
4 through the sales tax program.
5 And so I personally oversee the development of the
6 project, all through the what I call the preconstruction
7 phases which is all the upfront work you have to do before
8 construction starts, all the oversight of the design, making
9 sure you have all of the project permits, coordination with
10 all of the local municipalities like the Town of James
11 Island or the City of Charleston and also with the SCDOT
12 because these are SCDOT roadways.
13 So pretty much my responsibilities cover everything
14 that happened from the time that the project is started or
15 is -- is funded I should say, up through the point where it
16 goes to construction.
17 Q. All right. In my opening statement I talked to the
18 jurors and told them that the county has completed Johnnie
19 Dodds Boulevard, Harbor View Road, Wesley Drive, Glenn
20 McConnell Parkway, Bees Ferry Road. Were you involved in
21 those projects as a project engineer?
22 A. Yes, for all of those projects I was involved to some
23 degree.
24 Q. In the same capacity as you are involved in the Folly
25 Road, Camp Road, intersection project?

1 A. For Folly Road at Camp Road specifically I served as
2 directly as the project manager. For the other projects you
3 mentioned I was involved in other various roles assisting
4 with review of the project design and that kind of -- that
5 kind of thing.
6 Q. All right.
7 MR. FERRARA: Your Honor, may I approach the witness?
8 THE COURT: If they admitted it without objection you
9 just need to have the court reporter mark it.
10 MR. FERRARA: Okay. Well, they are marked, Your Honor.
11 THE COURT: What numbers?
12 MR. FERRARA: Plaintiff's Exhibit Number 1 and
13 Plaintiff ---
14 THE COURT: I have already admitted both of those
15 without objection. You may proceed.
16 BY MR. FERRARA:
17 Q. Mr. Valiquette, I hand you Plaintiff's Exhibit Number 1
18 and 2, really Condemnor's Exhibits Number 1 and 2. And also
19 in front of me is a large poster board showing some blue and
20 green lines and some houses. Does what is on the poster
21 board in front of the jury correspond to Exhibit Number 1?
22 A. Yes, it does.
23 Q. Is this just a larger blow-up of the exhibits I just
24 handed you?
25 A. Yes, that's correct.

1 Q. And then I am also going to show you this exhibit,
2 ladies and gentlemen. And is Exhibit Number 2 a smaller
3 version of this exhibit?
4 A. That is correct.
5 MR. FERRARA: Your Honor, I would like to publish
6 copies of these exhibits to the jurors.
7 THE COURT: You may proceed. I prefer you do it with
8 the ELMO.
9 MR. FERRARA: Pardon me?
10 THE COURT: Do you have individual copies?
11 MR. FERRARA: I do.
12 THE COURT: Or can you do it on the ELMO?
13 MR. FERRARA: I do have individual copies.
14 THE COURT: Can you do it on the ELMO?
15 MR. FERRARA: Pardon me?
16 THE COURT: Can you do it on the ELMO ---
17 MR. MITCHELL: Yes, Your Honor.
18 THE COURT: --- so they can all see it at one time?
19 MR. FERRARA: Would you not like for me to publish
20 these to the jury?
21 THE COURT: If you would like to. But they can all
22 see -- oh, you have individual copies?
23 MR. MITCHELL: Yes, Your Honor.
24 THE COURT: Oh, you can do that. Yes, you may proceed.
25 (WHEREUPON, individual copies were distributed to jury

1 members.)
2 MR. FERRARA: All right, Mr. Valiquette, before we get
3 into talking about Condemnor's Exhibits Number 1 and 2 does
4 Charleston County actually build the road projects?
5 A. Well, Charleston County will hire a construction
6 contractor which would be a private company that would
7 actually build the project.
8 Q. All right. And is that the same process that is going
9 to happen with the Folly Road, Camp Road, intersection?
10 A. Yes, that is correct.
11 Q. I am going to ask it anyway: Are you familiar with
12 this project, the Camp Road and Folly Road intersection
13 project?
14 A. Yes, I am.
15 Q. If you will, describe for the jury what your particular
16 duties are with regard to that project.
17 A. Since I served as the project manager I was responsible
18 for oversight of all the design activities that went on with
19 the project.
20 The design of the project was performed by another firm
21 working under contract with Charleston County, and then we
22 had an oversight role making sure that the design that they
23 prepared was consistent with all applicable standards for
24 highway design in South Carolina.
25 We -- I personally also made sure that all permits that

1 were needed for the project are in hand before construction
2 starts. Those are permits related to wetland impacts,
3 grand-tree impacts, and storm water permitting.
4 I also coordinated approval of the project with the
5 City of Charleston and the Town of James Island as well as
6 approval of the project by the South Carolina Department of
7 Transportation.
8 I also developed all of the construction specifications
9 for the bidding of the project for construction.
10 Q. All right.
11 MR. FERRARA: Your Honor, with the court's permission I
12 would like to ask Mr. Valiquette to step down from his seat
13 and show the court this platted, ---
14 THE COURT: You may proceed.
15 MR. FERRARA: --- large version. Can you step down?
16 (Witness complied.)
17 THE COURT: You may proceed.
18 BY MR. FERRARA:
19 Q. Let's talk about the overall project first.
20 A. Sure. This ---
21 Q. And if you will, why don't you stand there a few
22 minutes and tell the ladies and gentlemen of the jury what
23 the Folly Road, Camp Road, intersection improvement project
24 is.
25 And what I would like you to do is talk about

1 intersections, turn lanes, medians, painted medians,
2 signage, sidewalks, somewhere in the general discussion.
3 A. Sure. Just to orient the jury, if you are looking at
4 the display here, Folly Road runs up and down. And Camp
5 Road is this road that runs left to right here.
6 If you are -- if you are familiar with James Island if
7 you are heading towards Folly Beach on Folly Road that would
8 be towards the bottom of the display heading south toward
9 Folly Beach. And beyond the top of the display it would be
10 heading towards West Ashley or Downtown Charleston.
11 The purpose of the project was to reduce traffic
12 congestion at the intersection of Folly Road and Camp Road
13 which is I think one of the worst intersections on James
14 Island for congestion.
15 And the way that we are doing that -- or the primary
16 way that we are doing that is by providing dual left-turn
17 lanes for southbound Folly Road turning to eastbound Camp
18 Road.
19 Right now there is just one turn lane and then in the
20 after-condition there will be two turn lanes so that more
21 traffic can move through the intersection at any given cycle
22 of the traffic signal.
23 In order to do that we have to widen the road -- widen
24 Folly Road essentially from the intersection of Eugene Gibbs
25 Street and Rivers Point Row, which is right here (pointing)

1 to about 1,000 feet south of Camp Road on Folly Road.
2 And the purpose of that is to provide the additional
3 width needed for the second left turn lane. And also we had
4 to make sure that the alignment of the lanes through the
5 intersection matched. So we have to widen Folly Road south
6 of Camp Road.
7 Also on the Camp Road approaches to Folly Road we are
8 providing dedicated left-turn lanes in each direction for
9 vehicles turning left onto Folly Road from Camp Road and
10 also a dedicated right-turn lane from Camp Road turning
11 right and onto Folly Road heading into town for traffic.
12 That is the general commuting traffic direction in the
13 morning.
14 Also up here at Eugene Gibbs Street and Rivers Point
15 Row the existing intersections of those two streets where
16 they connect to Folly Road are somewhat offset. They don't
17 have good alignment through the intersection. And so the
18 project design is proposing to realign those streets
19 somewhat so that they have better alignment for improved
20 safety.
21 From the standpoint of bicycle and pedestrian
22 accommodations there will be bicycle lanes provided on Folly
23 Road as a part of the project from Eugene Gibbs Street down
24 to the end of the project. Those are four-foot wide bicycle
25 lanes. So there will be one basically adjacent to the

1 vehicular travel lane for a bicyclist going each direction.
2 There will also be sidewalks provided on both sides of
3 Folly Road within the limits of the project. And on Camp
4 Road the sidewalks will be provided on one side of the road.
5 Traffic signal improvements will be made at the
6 intersections of Camp Road and Folly Road as well as Eugene
7 Gibbs Street and Rivers Point Row at Folly Road. I think
8 that ....
9 Q. All right. Well, if you will, will you point out where
10 Mr. McAdory's property is on ---
11 A. Sure. The property ---
12 Q. --- that design sheet?
13 A. --- is located right here (pointing).
14 Q. Okay. If you will, what -- I see blue. I see green.
15 I see yellow and red. What does the blue ---
16 A. Sure.
17 Q. --- signify?
18 A. The display is intended to represent with the color
19 blue in here the existing pavement areas and to show you
20 basically the width of the existing road as it exists today.
21 The green represents what would be new pavement areas
22 or areas where the road is being widened to accommodate the
23 additional lanes that I mentioned.
24 The yellow lines -- or the yellow shaded areas
25 represent where the sidewalks are located. And you will see

1 also on here there are some red shapes here (pointing), down
2 here (pointing), and along Folly Road.
3 And those represent raised concrete medians. And they
4 are located in those areas where the engineers are
5 restricting vehicles from turning left across Folly Road.
6 And they have been really incorporated for improved
7 safety so that you can reduce the number of conflict points
8 for if somebody is trying to pull out of a driveway in an
9 unsafe area where there might be a lot of turn lanes, a lot
10 of movements happening and you want to restrict that. That
11 is the purpose of those.
12 Q. All right. One last question regarding this exhibit.
13 I see various lines like an orange line that goes down the
14 side of both sides of Folly Road and as well. What does
15 that line depict?
16 A. The orange -- the orange line as you can see represents
17 the new right-of-way that is needed to construct the road.
18 The existing right-of-way is represented by a kind of a
19 magenta pink line.
20 Q. All right. Well, just if you will stand there for a
21 little bit longer. I am going to put up for you to talk
22 about what the jury is is the condemnor's Exhibit Number 2.
23 And again if you will for the jurors ---
24 MR. FERRARA: Should I raise that for y'all? Or is
25 that -- is it fine?

1 Q. If you will stand over here.
2 (Witness complied.)
3 Q. Again if you will, ---
4 A. Can I ---
5 Q. --- just show them ---
6 A. Can I turn it to orient to the same direction as the
7 other?
8 Q. Yes, do that. I'm sorry. Yes, you are right.
9 A. Just to get oriented in the same -- in the same as the
10 other display was. This is -- this is Folly Road in front
11 of the subject parcel which is located right here
12 (pointing).
13 The color scheme is the same as the other exhibit. So
14 the blue represents the existing pavement. The green
15 represents the new pavement. And the sidewalks are shown in
16 yellow. And you can see it a little bit better here this
17 orange line. That represents the new right-of-way.
18 Q. All right. Can you show the jurors access to and from
19 Mr. McAdory's property before the intended acquisition?
20 A. The subject property was accessible from both
21 directions on Folly Road. There is a single driveway where
22 vehicles can pull in and out. They can turn either right
23 out or left out. And likewise they can turn either left in
24 or right in from Folly Road.
25 That is the same in the before or in the after

1 condition. There is not a restriction that would prevent
2 somebody from turning into the site from either direction.
3 Q. So access to and from McAdory's property is the same
4 before the County intended -- intends to acquire the
5 property as after the acquisition?
6 A. That is correct.
7 Q. I see on here this line that starts off narrow and
8 widens in front of his property and then narrows again into
9 that red that you called a raised median. Would you
10 describe to the jury what that ---
11 A. Oh, these?
12 Q. --- line represents.
13 A. The black lines on the exhibit here represent what the
14 proposed pavement markings will be. They are simply just
15 the striped markings that would be applied to the road.
16 The center median here is variable in width really
17 throughout the limits of Folly Road, because what is
18 happening is the pavement markings are delineating the left
19 turns for -- the dual left-turn lanes for traffic turning
20 southbound onto Camp Road. Camp Road would basically be
21 right down here (pointing).
22 And then there is a left-turn lane for vehicles turning
23 from Folly Road onto Eugene Gibbs Street just off -- would
24 be just off of the edge of the display.
25 So the -- because of the way that the width of the dual

1 left-turn lanes are down here (pointing) in comparison to
2 the single left-turn lane here (pointing). And this center
3 median area sort of tapers. It is a variable width here
4 within the limits of the project in the area.
5 Q. All right. Let's now talk specifically about Mr.
6 McAdory's property. And let's go through these different --
7 the colors: the blue, the green, the yellow, and the
8 orange.
9 THE COURT: Mr. Ferrara ---
10 MR. FERRARA: Yes, ma'am.
11 THE COURT: --- and Mr. Murphy, could y'all approach
12 for me for just one second.
13 (WHEREUPON, bench conference was had.)
14 THE COURT: Madam Forelady, ladies and gentlemen, we
15 are going to take a very brief break to take up a matter of
16 law. During this break please do not discuss the case and
17 please leave your notepads as well as your exhibit in your
18 seat. And we should be out less than five minutes.
19 (WHEREUPON, jury exits courtroom 2:49 p.m.)
20 (WHEREUPON, a break was taken until 3:02 p.m.
21 (WHEREUPON, jury enters courtroom 3:03 p.m.)
22 THE COURT: Sir, you may step back down. And if you
23 need the question repeated, Mr. Ferrara, you may certainly
24 do that.
25 MR. FERRARA: Thank you, Your Honor.

1 BY MR. FERRARA:
2 Q. I am going to have Mr. Brad Mitchell place up on this
3 screen the same exhibit that you have in front of you, the
4 smaller version. And that is the same exhibit on the stand
5 in front of you as well.
6 MR. FERRARA: I know it is getting late in the day, and
7 I just have a couple more questions of Mr. Valiquette and
8 then we will turn him over to Mr. McAdory's lawyer.
9 BY MR. FERRARA:
10 Q. Mr. Valiquette, what I want to talk about now again is
11 let's talk about what Charleston County is going to acquire.
12 Do you know how many acres, how many square feet; do you
13 know what the size of the area of the acquisition is?
14 A. Yes, the area of the acquisition is 0.030 acres.
15 Q. Can you translate that into square feet?
16 A. I believe it is around 1,200 square feet.
17 Q. One thousand two hundred eighty-seven to be exact.
18 A. Okay. All right.
19 Q. If you will, let's show the jurors the acquisition of
20 the property. Go ahead.
21 A. Sure. The subject property is this parcel right here
22 (pointing). The -- as you can see, the road that is being
23 widened it is represented by the green area. The new edges
24 of vehicular travel way where the edges -- where motor
25 vehicles would travel will be about six feet closer to the

1 property than it is today.
2 We are also adding a four-foot wide bicycle lane.
3 There will be -- that has curb and gutter on it. Today it
4 will have curb and gutter on it in the after condition which
5 is about two feet wide. And then there will be another
6 five-foot wide sidewalk beyond the curb and gutter.
7 So all toll I believe the road will be wider towards
8 the building by about 17 feet. Beyond the 17 feet to the
9 back of -- to the back of the sidewalk.
10 And then after the sidewalk there was some room for the
11 contractor to work. So the right-of-way limit is about 10
12 feet beyond that.
13 And then from the edge of the right-of-way to the
14 face of the building is going to be about another six feet
15 or so.
16 Q. All right, that was a mouthful. So what I would like
17 to do is just break that down real quickly.
18 A. Certainly.
19 Q. What does that line (pointing) represent?
20 A. That represents the new right-of-way for the project.
21 Q. And that is where the County is acquiring -- is the
22 County acquiring like in this in this box here (pointing)?
23 A. That is correct.
24 Q. Okay. From the front of the building to the edge of
25 the right-of-way, how many feet?

1 A. Approximately six feet.
2 Q. From the end of the right-of-way to the sidewalk, how
3 many feet?
4 A. That is approximately ten feet.
5 Q. From the edge of the sidewalk to the -- what is that,
6 bicycle lane?
7 A. That would be about another six feet. And four foot of
8 it is the bicycle, and two feet of it is curb and gutter.
9 Q. Okay. Has the blue area where cars travel changed from
10 the -- changed from before the acquisition of the property?
11 A. The ---
12 Q. I mean -- let me rephrase the question. Cars traveling
13 in this lane, will they be any closer to this building after
14 the -- after the County acquires the property?
15 A. Yes, they will be about six feet closer to the
16 building.
17 Q. And again, from the front of the building to the road
18 what is your estimation of feet?
19 A. To the proposed road?
20 Q. Yes, proposed road.
21 A. That is approximately -- I have got to do the math in
22 my head again. Approximately 22 feet, I believe.
23 Q. Okay. All right. One other item. Let's talk about
24 the property. What -- do you know what size the parcel Mr.
25 McAdory owns what the size of that parcel is?

1 A. In the before condition it is 0.254 acres. Just over a
2 quarter acre.
3 Q. Okay. And it is a rectangular shape?
4 A. That is correct.
5 Q. What is this along here beside the property (pointing)?
6 A. I think you're pointing to the property lines.
7 Q. That's right.
8 A. The boundaries.
9 Q. All right. Is there -- how close is the building to
10 this property line; what is that distance?
11 A. It measures approximately three to five feet.
12 Q. Is that -- does that conform to zoning?
13 A. I am not familiar with zoning laws, but I understand it
14 does not.
15 Q. On this side do you know if it ---
16 A. I don't know the measurement there to scale it off.
17 Q. Are you aware that Mr. McAdory had parking spaces in
18 the front of the building?
19 A. Yes.
20 Q. How wide is it under the rule -- under the road
21 standards for Charleston County is the width of a parking
22 space?
23 A. I believe it is eight feet wide.
24 Q. Okay. Will there be any parking available as a result
25 of the County's acquisition of property?

1 A. No, there would not be.
2 Q. Okay, parking available in front of the building?
3 A. There would not be parking available in front of the
4 building.
5 Q. All right.
6 A. That is correct.
7 Q. Now are you aware that there is a sign as well in the
8 right-of-way?
9 A. Yes.
10 Q. And will the sign be removed from the right-of-away?
11 A. It will have to be relocated.
12 Q. If you will take your seat. I may be finished but let
13 me just see if I have any further questions for you.
14 (WHEREUPON, witness returned to witness stand.)
15 MR. FERRARA: If you will answer any questions from Mr.
16 McAdory's counsel. Thank you.
17 THE COURT: You may proceed.
18 MR. MURPHY: Thank you, Your Honor
19 THE COURT: You are welcome.
20 **CROSS-EXAMINATION BY MR. MURPHY OF MR. VALIQUETTE:**
21 Q. Good afternoon, Mr. Valiquette. Mr. Valiquette, you
22 are an engineer hired by the County; is that correct?
23 A. That is correct.
24 Q. And you are not here to give an opinion on value, are
25 you?

1 A. No, I am not.
2 Q. And you are just discussing the facts of this case?
3 A. That is correct.
4 Q. And so basically you don't really have a dog in this
5 fight, do you?
6 A. No, I don't.
7 Q. And how many times have you visited the site?
8 A. The project has been going on since it was passed by
9 voter referendum November of 2006. I am out there every
10 month or so.
11 Q. Okay. But did you actually walk the site and take
12 measurements of the site?
13 A. I have not -- I have walked along Folly Road in front
14 of the site. I have not entered into the site.
15 Q. Okay. And do you think that you would have to actually
16 walk the site and take measurements to understand how this
17 was impacting the property?
18 A. To get precise measurements the construction stakes
19 would have to be placed out there. The measurements that we
20 are talking about are based off of survey data that was
21 collected to develop the project.
22 Q. And do you understand the setup of the building that is
23 on the property? And when I say that, they have it set up
24 for offices and for reception area to be in the front of the
25 property and there's garages in the back of the property; is

1 that your understanding?
2 A. I am only generally familiar with that, yes.
3 Q. You haven't entered the property at all?
4 A. No.
5 Q. Now you understand the law -- under the law the County
6 has an obligation to put the landowner in as good a position
7 in the after as he was in the before?
8 A. That's my understanding.
9 Q. And if you could tell me how much depth is the County
10 taking off the subject property?
11 A. The existing right-of-way I believe is 38 feet. And I
12 believe it is going to 59 feet. So 21 foot difference.
13 Q. So it is going to be moving -- the right-of-way is
14 going to be lined -- moving 21 feet closer to the building?
15 A. That is correct.
16 Q. And you would agree -- well, let me ask you this: Are
17 you familiar with the setbacks as they apply to the front of
18 the building?
19 A. No, I am not.
20 Q. And do you know if in the after the building will
21 violate the front setbacks as required by the town?
22 A. I am not familiar with what the setbacks are.
23 Q. Okay. Now just from common sense, you said it was
24 about six feet, the right-of-way, would be about six feet
25 from the building?

1 A. That is correct.
2 Q. Okay. And briefly just explain what are setbacks.
3 A. Well, setback it is my understanding from a zoning
4 perspective are the minimum distance between a road
5 right-of-way or adjacent property line to a structure.
6 Q. And just from your own experiences does a six-foot
7 setback sound like that would be in conformity with what is
8 required?
9 A. The zoning laws are widely variable depending on where
10 a property is located. So it is hard to say specifically.
11 Q. All right. Well, let's see -- let me ask you this:
12 Assuming that the six feet right-of-way from the building
13 violates the setbacks do you know when they would be
14 triggered?
15 A. No, I do not.
16 Q. And you would agree that when you take off 17 feet of
17 depth off the property you also that in turn reduces the
18 developable area of the entire site?
19 A. Yes, the site would be smaller.
20 Q. All right. So the entire site would be affected by
21 this taking?
22 A. Yeah, the remaining area is smaller than the existing
23 area.
24 Q. And did the County ever consider shifting the roadway
25 away from Mr. McAdory's property so it wouldn't have such an

1 impact on him?
2 A. Properties are impacted on both sides of Folly Road,
3 and so the proposed plan was to widen Folly Road
4 symmetrically so as not to impact one side more than the
5 other.
6 Q. So the County made a conscious decision to move the
7 right-of-way within six feet of Mr. McAdory's building?
8 A. That is what is necessary to accommodate the design
9 that is proposed.
10 Q. And you are -- this is Mr. McAdory's building
11 (pointing); isn't that correct?
12 A. Yes, it appears to be.
13 Q. And you see that sign there that we discussed or that
14 you discussed with Mr. Ferrara?
15 A. Yes.
16 Q. Okay. And there is no question that sign has to be
17 moved after this acquisition?
18 A. I believe that is correct, yes.
19 Q. And in the before -- well, since the project hasn't
20 started, it is still there. But would you agree that that
21 sign is in a good location on the property?
22 A. Not really. As far as visibility?
23 Q. Yes.
24 A. I mean ....
25 Q. Would you say it is highly visible?

1 A. I would say that it is a visible sign, yeah.
2 Q. In your opinion as an engineer and as a person, is
3 there any better location to put that sign in the before on
4 this property?
5 A. That would be more of a question for an architect or a
6 site development firm. My specialty is in highway --
7 highway design and ---
8 Q. Well, you have been by the property several times, as
9 you testified. Just as a layperson do you know of any
10 better location for that sign?
11 A. I am not familiar with one.
12 Q. And I am trying to figure out - and this question
13 hasn't been asked - is where are you going to put this sign
14 or where can Mr. McAdory put this sign in the after?
15 A. The sign would be a moving item under the construction
16 contract. And so the contractor would be directed to move
17 it to a location on -- outside of the right-a-way on the
18 property at the direction of the property owner.
19 Q. Okay. But my question is where could he move it; where
20 would you propose that it be moved to?
21 A. I would not propose where it should be located. That
22 would be subject to the property owner.
23 Q. Can it be moved to the roof, do you know?
24 A. I am not familiar with what the requirements would be
25 for its location. It would be subject to the property

1 owner's direction.
2 Q. What about this, would you -- would it make sense to
3 put the sign on the front of the building?
4 A. If -- it wouldn't really be my decision to make it. To
5 specify a location that would be up to the property owner.
6 Q. Again, I am just asking a common sense point of view.
7 Would it make sense to put the sign on the front of the
8 building?
9 A. If the property owner wanted it there, that is where he
10 could put it.
11 Q. And if they did -- if they did put it on the front of
12 the building then you would agree that cars traveling either
13 east or west wouldn't be able to see it?
14 A. I think that would depend on the angle of the driver
15 and what direction they happen to be looking in.
16 Q. Well, if they are driving east and -- if they are
17 driving this way (pointing) and the sign is facing here
18 (pointing) how would they be able to see it? Do you see ---
19 A. Yeah, I understand what you are saying.
20 Q. Okay.
21 A. You are asking if it would be perpendicular to the
22 roadway or parallel to the roadway and what effect that
23 would have on the ---
24 Q. That is correct. And ---
25 MR. FERRARA: Your Honor.

1 THE COURT: Is there an objection?
2 MR. FERRARA: There is. I ---
3 THE COURT: Basis of the objection. No speaking
4 objections.
5 MR. FERRARA: It is outside his expertise as a project
6 engineer to talk about ---
7 THE COURT: Lack of foundation. Sustained. Move on,
8 Mr. Murphy.
9 BY MR. MURPHY:
10 Q. Now you also testified that Mr. McAdory had parking in
11 front of his building in the before?
12 A. That is correct.
13 Q. And we agreed that all of that parking is going to be
14 eliminated in the after?
15 A. The parking spaces in front of the building would be
16 encumbered by the road right-of-way.
17 Q. And he wouldn't have space to put any parking in the
18 front of the building then?
19 A. Not -- not within the -- not outside of the
20 right-of-way.
21 Q. And he is not allowed to park in the right-of-way is
22 he, in the after?
23 A. That would be property owned by the State or the County
24 and so.
25 Q. So that is my other question. Let's get back to that.

1 This property is going to be -- is acquired by the County
2 but it is going to be transferred to the State?
3 A. That's correct.
4 Q. And SCDOT is only going to own that property in fee
5 simple; isn't that correct?
6 A. Yes.
7 Q. And of course you can't speak for what SCDOT would do
8 in the future with this property, can you?
9 A. No, I cannot.
10 Q. And in terms of -- can you -- do you have the plans up
11 there? What I am asking is can you tell me what the
12 dimensions are of the alley that someone would enter the
13 property to go to the rear portion of it.
14 A. I would -- I would have to scale the dimension to be --
15 to be certain. It looks to be just based on the other
16 features you can see there, maybe 16 feet wide or so.
17 Q. Okay. And I think that is about right, 16 feet wide.
18 And do you have -- can you estimate how deep it is?
19 A. To the back of the property?
20 Q. Well, to the -- yeah, to the -- to the length of the
21 building. I'm sorry.
22 A. I couldn't really estimate with any degree of accuracy
23 just looking at it.
24 Q. And what is the -- let me ask you this: What is in the
25 standard dimensions of a parking space?

1 A. A parking space is about eight feet wide as I
2 understand it.
3 Q. All right. And let me just ask you this issue: In
4 terms of parking along side of the building in the alleyway,
5 is that possible at all?
6 A. That -- I think that would be dependent on what
7 accessibility you would need ---
8 Q. Okay. Well ---
9 A. --- to another part of the property.
10 Q. All right. Well, let's do this. If the alleyway is
11 sixteen feet wide and the standard parking space is eight
12 feet wide, how wide is an average car; what is the width of
13 an average car?
14 A. That's a little bit outside -- I think a fair
15 assumption would be six to eight feet wide depending on the
16 type of vehicle.
17 Q. All right. So if you have an eight feet car that is --
18 a parking space that is eight feet, that would take up eight
19 of the sixteen feet, right; and would it be possible in your
20 opinion to drive another eight-foot car past that?
21 A. It certainly would be a tight fit if it would.
22 Q. As an engineer would you recommend that site design?
23 A. My experience is with highway engineering, not
24 necessarily civil site redevelopment type engineering.
25 Q. All right. Well, let's talk about this. If you have a

1 road design, if you have a double road, one going one way
2 and the other going the opposite, would you recommend that
3 both of those be 16 feet wide?
4 A. The minimum would generally be eighteen feet wide ---
5 Q. Okay.
6 A. --- for two nine-foot wide lanes.
7 Q. Okay. So would it be a fair assumption or would you
8 agree that a car cannot enter the property and exit the
9 property at the same time?
10 A. Based on just the width of that area if it is in fact
11 sixteen feet it would be difficult for two large vehicles to
12 pass.
13 Q. Difficult or impossible?
14 A. It just depends on the size of vehicle. I ....
15 Q. What about customers parking in the back of the parking
16 lot, as an engineer does that cause you any issues?
17 A. No.
18 Q. No. You are not concerned about safety of --
19 well, let me ask you this: Where would the customers -- how
20 would they get to the building -- or to the office area if
21 they parked in the back?
22 A. They would have to walk from where ever they parked to
23 the entrance of the building.
24 Q. And in your opinion would it be feasible to walk
25 through the garage to get to the front of the building?

1 A. That would be more subject to the business owner's
2 prevue.
3 Q. And then if they were walking on the -- through the
4 alleyway which side of the alleyway would you expect them to
5 walk on?
6 A. I would expect a person to walk in the most direct path
7 from one point to the other.
8 Q. And as an engineer does that present any safety issues
9 with you with customers walking towards the office and cars
10 trying to enter and exit the premises?
11 A. From the perspective of safety it would come down I
12 think to a matter of visibility and whether or not
13 pedestrians can see the cars and the cars can see the
14 pedestrians.
15 Q. In terms of -- I mean you wouldn't have -- if -- when
16 you are designing a road you wouldn't have -- expect
17 pedestrians be walking in the middle of the road or on --
18 would you?
19 A. I mean if it is a situation similar to a parking lot or
20 an isle of a parking area I think it is fairly common for a
21 pedestrian to walk down an aisle of a parking lot.
22 Q. And let's just talk about your experience with
23 businesses. Typically businesses will have a main entrance;
24 isn't that correct?
25 A. From my -- my observation.

1 Q. And from a design standpoint you would want the parking
2 lot to be in front of the main entrance; would you make that
3 assumption, or would you agree with that?
4 A. I think there -- that would really be dependent on the
5 type of development. I think you can see development
6 downtown Charleston where parking is not necessarily
7 associated with the main entrance of the building.
8 Q. Okay. Can you give -- now in terms of downtown you are
9 dealing with site and size issues, wouldn't you agree with
10 that?
11 A. Yes.
12 Q. And that is not really comparing to the 11,000 square
13 foot traffic property; is that right?
14 A. I don't know that the size of the property -- I think
15 that would come down to a question of zoning and what the
16 law would allow somebody to do for a minimum number of
17 parking places relative to the size and location of a
18 specific building.
19 Q. Would you agree that having parking opposite the main
20 entrance of this -- of this garage puts Mr. McAdory in a
21 lesser position in the after than he was in the before?
22 MR. FERRARA: Objection, Your Honor.
23 THE COURT: Basis?
24 MR. FERRARA: It's beyond the scope of the direct
25 examination.

1 THE COURT: Sustained. Beyond the scope. And outside
2 the scope of his expertise or his lay opinion.
3 BY MR. MURPHY:
4 Q. Do you have any experience with site design at all?
5 A. No, not since college.
6 Q. Okay. So you took some classes in site design?
7 A. We did a subdivision design class.
8 Q. Okay. Did you do any commercial design classes or
9 projects?
10 A. No, I did not.
11 Q. Looking at the design of this site -- of this property
12 right now from an engineering standpoint does that make
13 sense to you?
14 A. You are asking in specific to ...?
15 Q. If you were going to design the site would you design
16 it with parking in the back?
17 A. There -- there is a school of thought regarding kind of
18 new urbanist design which does encourage parking in the
19 back. It is to try to create a more urban feel that is
20 being proposed in certain areas of the city.
21 Q. Okay. But that -- under that urban design you would
22 also have the main entrance in the back as well?
23 A. Not necessarily. Because that design concept would
24 encourage more pedestrian activity and so they would like to
25 put the entrance near the sidewalk and try to put large

1 parking areas away from what would be the streetscape.
2 Q. And can you give us any examples of that type of urban
3 design you are discussing?
4 A. Daniel Island is a good example or I'on in Mt. Pleasant
5 where you try to push the large parking areas to behind the
6 buildings.
7 Q. Okay. And that is not happening at all on Folly Road,
8 is it?
9 A. The City of Charleston is -- has developed their what
10 they call their Century Five Plan which identifies certain
11 parts of the city for to try to create urban type nodes
12 where the communities would be walkable and parking areas
13 would be minimized and set behind buildings.
14 Q. In terms of -- let me ask you about -- in terms of you
15 are familiar with like night-time or after-hours drop off
16 with garages?
17 A. Just from my personal experience.
18 Q. Your personal experience. And tell me if folks were
19 going to drop off cars after hours here where would they
20 park them?
21 MR. FERRARA: Your Honor ---
22 THE COURT: Basis of the objection?
23 MR. FERRARA: Beyond the scope of the direct. Outside
24 the scope of his expertise. And he is an engineer.
25 THE COURT: No speaking objections. Outside of the

1 scope of his expertise. Lack of foundation. You may
2 proceed.
3 MR. MURPHY: Very well. That's all I have, Your Honor.
4 THE COURT: Any redirect of the witness?
5 MR. FERRARA: Just a couple of questions, Your Honor.
6 THE COURT: You may proceed.
7 MR. FERRARA: If he could have that visual real quickly
8 of the front of the building with the cars.
9 (Visual displayed.)
10 **REDIRECT EXAMINATION BY MR. FERRARA OF MR. VALIQUETTE:**
11 Q. Mr. Valiquette, can you show the jury -- the jurors
12 where the existing right-of-way is on that picture?
13 A. It is difficult to say with certainty. But it is most
14 likely the -- you can see where the -- it looks like a Jeep
15 Wrangler is parked. And you see a little bit of the grass.
16 MR. MURPHY: I am going to object, Your Honor. This is
17 speculation. He said ---
18 THE COURT: He is ---
19 MR. MURPHY: --- it is difficult to see. And unless he
20 can attest to a reasonable degree of certainty it is
21 speculative.
22 THE COURT: Overruled.
23 MR. FERRARA: He is not an expert.
24 THE COURT: Don't talk to one another. The objection
25 is overruled.

1 BY MR. FERRARA:
2 Q. Continue then. Or do we need to repeat the question?
3 A. It would be from my experience in how sites have been
4 developed respective to where the right-of-way line would be
5 you can see in most cases the parking lots would come up to
6 the right-of-way which would then have a grass transition
7 area before the edge of the roadway. And you can see the
8 grass underneath the Jeep Wrangler there on the left side of
9 the photo.
10 Q. All right. And Mr. Murphy asked you a question. Said
11 well and when the County acquires this property the new
12 right-of-way is going to be six feet from the front of the
13 building and there won't be any available area for parking
14 and you can't park on the right-of-way. Is the Jeep
15 Wrangler parked in the right-of-way?
16 A. If the grass line represents the right-of-way, the jeep
17 would be in the right-of-way.
18 Q. All right.
19 MR. FERRARA: That's all I have, Your Honor.
20 THE COURT: Any objection to the witness being excused,
21 from the landowner?
22 MR. MURPHY: None, Your Honor.
23 THE COURT: From the County?
24 MR. FERRARA: None, Your Honor.
25 THE COURT: Sir, you are excused.

1 Landowner may proceed.
2 MS. WALSH: The landowner would like to call Glenn
3 McAdory.
4 THE COURT: Sir, if you would come to the stand to be
5 sworn.
6 (WHEREUPON, the witness was duly sworn.)
7 THE CLERK: State your full name and spell your last.
8 MR. MCADORY: My name is Walter Glenn McAdory,
9 M-C-A-D-O-R-Y.
10 THE COURT: You may proceed.
11 WALTER GLENN MCADORY, first being
12 duly sworn, testified as follows:
13 **DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:**
14 Q. Mr. McAdory, could you please state your name for the
15 record.
16 A. Walter Glenn McAdory.
17 Q. Mr. McAdory, where were you born?
18 A. Charleston, South Carolina.
19 Q. And what year were you born?
20 A. 1968.
21 Q. And how old are you?
22 A. Forty-five years old.
23 Q. Did you live in Charleston, South Carolina, your whole
24 life?
25 A. I have.

1 Q. And where did you grow up?
2 A. James Island.
3 Q. And where did you go to school?
4 A. Between James Island and Mt. Pleasant.
5 Q. Where did you go to high school?
6 A. I went to Wando High School for a couple of years when
7 I went to live with my mother.
8 Q. Are you currently married?
9 A. Yes, I am.
10 Q. How long have you been married?
11 A. Been married for 26 years.
12 Q. And what is your wife's name?
13 A. Jennifer.
14 Q. And what does Jennifer do for a living?
15 A. Jennifer is the office manager for Lex-Tech Automotive.
16 Q. And what is Lex-Tech Automotive?
17 A. Lex-Tech Automotive is an exclusively Lexis and Toyota
18 repair and maintenance facility.
19 Q. And who owns Lex-Tech Automotive?
20 A. I do.
21 Q. Do you have any children?
22 A. I do.
23 Q. How many?
24 A. I have two children.
25 Q. And what are their -- how old are they?

1 A. My oldest daughter is 25, and my youngest daughter is
2 20.
3 Q. Do any of your children live with you?
4 A. Yes, my youngest lives with us.
5 Q. Did you graduate from high school?
6 A. No, I did not.
7 Q. Why not?
8 A. Unfortunately at that time in life I felt that work was
9 more important than a high school diploma.
10 Q. Any why did you think work was more important than a
11 high school diploma?
12 A. As a young child my father instilled in me one heck --
13 one heck of a work ethic. And I love to work. I had a job
14 at my -- I started working at my uncle's salvage yard on
15 James Island at approximately age 12.
16 I just I loved automobiles. I had a job, and that is
17 where I wanted to be. I wanted to work on cars. I knew
18 that is what I wanted to do.
19 Q. How long did you work at your uncle's salvage yard?
20 A. From about age 12 to age 16.
21 Q. Did you have any type of work as a young boy?
22 A. Yeah, I was pretty crafty as a child. Ages eight,
23 nine, ten I would pull lawnmowers or bicycles or lawn
24 equipment from off the side of the street. Either rebuild
25 it, sell it, or for instance a lawnmower get it running

1 again and go cut the neighbor's grass.
2 Q. Did you ever get your GED?
3 A. I did not.
4 Q. And why didn't you do that?
5 A. Again, I didn't feel the need as an automotive
6 technician that a GED would put me any further.
7 Q. Where did you learn to become an automotive technician?
8 A. Again, I started working in my uncle's salvage yard and
9 garage at about age 12. I worked alongside, you know, him.
10 I was -- just started off dismantling vehicles. And I just
11 I had a good -- good automotive knowledge. I had a good
12 mechanical knowledge.
13 Q. Did you ever work for any new car dealerships?
14 A. I did. I went to work for Hoover Chrysler Plymouth at
15 about age 17.
16 Q. Where is that located?
17 A. Down Savannah Highway?
18 Q. And what was your title at Hoover?
19 A. I was a line technician.
20 Q. What is a line technician?
21 A. Just a technician that works on, you know, the cars
22 that come in to be repaired.
23 Q. How long did you work there?
24 A. I worked there for about nine months.
25 Q. And where did you go after you stopped working at

1 Hoover?
2 A. I went to work for Gene Reed Toyota up on the corner of
3 Rivers and Ashley Phosphate in 1988
4 Q. And what was your title at Gene Reed.
5 A. I was again a line technician.
6 Q. And where did you go in 1988?
7 A. I'm sorry?
8 Q. You worked at Gene Reed Toyota as a line technician
9 from 1988 ---
10 A. Oh, I'm sorry.
11 Q. Okay.
12 A. Yes, from 1988 until about 1992 when Gene Reed obtained
13 what we call -- obtained a Lexus franchise. He obtained the
14 Lexus franchise, built a new showroom on our existing Toyota
15 lot, added to the existing Toyota shop. I moved from the
16 Toyota side to the Lexus side as a Lexus technician.
17 Q. Did you remain a line technician?
18 A. Actually I progressed pretty quick. I started off as a
19 line technician at the bottom in '88, and then right around
20 '91, '92, I became shop foreman and team leader and then
21 again moved over to Lexus.
22 I was the only Lexus technician in Charleston for about
23 two years because we were small. It was a new dealership.
24 So there was no need to be a team leader because I was the
25 team.

1 Q. So from 1990- -- from 1988 to 1992 you worked with
2 Toyota?
3 A. I did.
4 Q. And then you stayed with the same dealer ---
5 A. Same -- same owner, yes.
6 Q. Same owner. And then you went to go work in 1992 for
7 Lexus?
8 A. Yes.
9 Q. And how long did you work at Lexus?
10 A. I worked for Lexus of Charleston from 1992 until
11 October of 2006.
12 Q. So for approximately 14 years?
13 A. Yes, for Lexus.
14 Q. While you were working for Lexus and Toyota did you
15 have any training?
16 A. Yes, very very extensive training. Toyota and Lexus
17 were very -- if you showed promise -- the dealer and
18 obviously the manufacturers wanted to make sure that you got
19 trained and that you knew their product so that you could
20 obviously service their customer's vehicles properly. So
21 yes, I have had very extensive training through Toyota and
22 Lexus Motor Corporation.
23 Q. So in 2006 you left Lexus?
24 A. Yes.
25 Q. And what did you do?

1 A. I started my own Lexus and Toyota business, Lex-Tech
2 Automotive.
3 Q. And what does the Lex mean in Lex-Tech Automotive?
4 A. Lexus.
5 Q. And what does Tech mean?
6 A. Technician.
7 Q. Is Lex-Tech -- what type of company is Lex-Tech
8 Automotive?
9 A. It is a sole -- excuse me, sole member LLC.
10 Q. And what does LLC mean?
11 A. Limited liability company.
12 Q. And so when you say sole owner are you the president,
13 CEO ---
14 A. I am. I am everything, the president, the CEO;
15 everything.
16 Q. And you don't have any partners?
17 A. I have no partners.
18 Q. Who is responsible for writing checks for the expenses
19 for that company?
20 A. I am.
21 Q. Can you please explain the type of work you do at
22 Lex-Tech Automotive?
23 A. We do anything that the Lexus and the Toyota dealership
24 does. We just do it -- it is less expensive. Same people,
25 same parts. Different facility.

1 Q. How long have you run Lex-Tech Automotive?
2 A. From -- I started in late 2006 until present. Until
3 current. Okay. And is signage important to your business?
4 A. Extremely important.
5 Q. All right. And so in 2006 when you open up Lex-Tech
6 Automotive did you rent property?
7 A. No, I rent -- yes, I did rent property.
8 Q. Did you look to buy property at that time?
9 A. No, ma'am.
10 Q. Why not?
11 A. I was starting a new business. I didn't know if it was
12 going to be a viable business. I wanted to rent. I
13 couldn't afford to purchase property.
14 Q. Did you, Mr. McAdory, eventually start looking for
15 commercial property?
16 A. We did. In about mid 2010 Lex-Tech was profitable and
17 growing and we wanted to purchase a commercial piece of
18 property to give us more visibility, more exposure and let
19 everybody know who we were and where -- what we did.
20 Q. What were you looking for in terms of property; what
21 were you going to put on a piece of property?
22 A. I was going to put Lex-Tech Automotive.
23 Q. Okay. And ideally what kind of characteristics were
24 you looking for in purchasing a property?
25 A. I was looking for something in a high vehicle traffic

1 area. I was looking for something that had signage and
2 visibility, exposure.
3 I was looking for a building that wasn't going to
4 require a complete total retrofit that could be turned into
5 a garage with minimal upfitting, vehicle access in and out,
6 parking in the front, storage for cars in the back.
7 We have customers that drop a vehicle off and make the
8 repair. It may take a day or two or three for them to pick
9 it up. We have other vehicles that we order parts for.
10 Parts may not be readily available. That may take a day or
11 two or longer. We have employs that park in the back. I
12 mean so obviously if you are dealing with automobiles you
13 need places to put automobiles.
14 Q. What kind of price range were you looking for when you
15 were looking for commercial property?
16 A. We were looking for something $400,000 or less.
17 Q. Okay. At the time in March of 2010 when you decided to
18 look for commercial property did you have a real estate
19 agent?
20 A. Yes, I did.
21 Q. And what was the name of your real estate agent?
22 A. It was Mark Mizell with the Saddler Group.
23 Q. And did you, Mr. McAdory, hire Mr. Mizell?
24 A. I did
25 Q. Okay. And how many properties did you look at?

1 A. We -- he showed me -- I looked at three. One on my
2 own. And he showed me two.
3 Q. When -- did you ever look at -- when did you look at
4 the property that is subject to the taking?
5 A. It was either in October or November of 2010.
6 Q. And did you, Mr. McAdory, look at it with your real
7 estate agent?
8 A. I did.
9 Q. And did you -- what did you like about the property
10 located at 873 Folly Road?
11 A. It had everything that I just mentioned. It had -- it
12 was in the commercial core of James Island which has a high
13 vehicle traffic area. It already had an existing what I
14 call a billboard sign with the frame already existing.
15 Through some property research found out that that
16 building had actually originally been built as an automotive
17 repair business in the mid 80's. So I knew that it
18 wouldn't -- it would take minimal upfitting to bring it back
19 to what I wanted to use it for, a garage.
20 Q. Did it have parking?
21 A. Yes, it did.
22 Q. Where was the parking located?
23 A. We had parking in the front, and we had parking in the
24 rear of the building.
25 Q. And the parking in front, who was going to use the

1 parking in the front?
2 A. Customers that pull in for vehicle service.
3 Q. Okay. And once customers pulled in for vehicle service
4 what did you envision at the time when you were looking at
5 the property how would the vehicles get from the front of
6 the lot to the back of the lot?
7 A. Well, the way that works is pretty simple. Customer
8 drives in, parks in the front, walks in the front door.
9 Our service writer, Richard Dennis, addresses that
10 customer, listens to their needs, writes a repair order. He
11 walks out. He obtains the vehicle. He drives the vehicle
12 around back. He backs it in. He hangs the keys on our
13 backboard in the shop. He generates a repair order. Boom,
14 the technician sees the repair order. He grabs the keys.
15 He walks out back. He either takes the vehicle for a test
16 drive or he brings it in for whatever reason the vehicle is
17 there for.
18 Q. Okay. And there is a building on the property,
19 correct?
20 A. Yes.
21 Q. And is the building affixed to the property?
22 A. Yes.
23 Q. Is it on a concrete slab?
24 A. It is.
25 Q. And can you just pick up the building and move it?

1 A. No, I cannot.
2 Q. And if you wanted to move the building or removed the
3 building what would you have to do?
4 A. I would have to obviously tear the building down. Then
5 I would have to meet all of the latest and greatest
6 Charleston County and James Island codes for setback. I
7 would have had to add a drainage or retention pond.
8 I would basically just have to start from scratch and
9 meet all of the latest and greatest codes and regulations.
10 Q. And when you were looking at the property in 2010 did
11 it have signage?
12 A. It did.
13 Q. And what was the property -- what was occupying that
14 building at the time you went to go look at the property in
15 October 2010?
16 A. Prior it had -- it was an auto title money loan.
17 Q. And could you use the sign that was present on the
18 property?
19 A. Actually I could use the existing post and the lighted
20 50 by 10 box frame that was there. It was going to be a
21 minimal investment. The sign post was there. The
22 illumination was there. The box was there. All I had to do
23 was have two custom made lenses which just kind of insert
24 into that box. Obviously it has backlighting, so it shines
25 through at night.

1 Q. How many times did you visit the Folly site?
2 A. About three times.
3 Q. Okay. And do you recall the asking price for the
4 property?
5 A. I believe it was $385,000.
6 Q. And at that time did you know the owner or the seller?
7 A. I did not.
8 Q. And can you please describe the negotiations.
9 A. They were difficult. The owner did not really -- he
10 did not want to budge off the price.
11 Q. And did you finally settle on a price?
12 A. We did.
13 Q. And how much was that?
14 A. $375,000.
15 Q. And was the $375,000 purchase price a fair market value
16 in your opinion?
17 A. Yes, it was.
18 Q. And who bought that property?
19 A. I did.
20 Q. Was there a mortgage on the property?
21 A. Yes.
22 Q. And when did the property close?
23 A. I believe we closed in late January of 2011.
24 Q. And who was on the mortgage note for the property?
25 A. Me, Glenn McAdory.

1 Q. Is there anybody else on the mortgage note for the
2 property?
3 A. Lex-Tech Automotive.
4 Q. And who signed on behalf of Lex-Tech Automotive?
5 A. Me, Glenn McAdory.
6 MR. FERRARA: Your Honor, objection.
7 THE COURT: Approach, please.
8 (Bench conference was had 3:45 p.m.)
9 (Bench conference concluded as follows:)
10 MR. FERRARA: From this point forward continuing
11 objection ---
12 THE COURT: You are going to have to make and
13 objection.
14 MR. FERRARA: Every time?
15 THE COURT: Yes.
16 (Conclusion of bench conference.)
17 THE COURT: You may proceed.
18 Q. Mr. McAdory, what were your plans -- well, to go back.
19 You, Mr. McAdory -- so Mr. McAdory, let's get this straight.
20 You purchased the property and the property is titled in
21 your individual name?
22 A. Yes, Walter Glenn McAdory.
23 Q. Okay. And are you responsible for a mortgage on the
24 property?
25 A. Yes, I am.

1 Q. And how much is your monthly mortgage payment?
2 A. About $2,500 a month.
3 Q. And what were your plans when you got the property as a
4 landowner?
5 A. To use it -- or to -- for Lex-Tech Automotive to use it
6 as an automotive repair business.
7 Q. And are they a tenant?
8 A. Yes, as a tenant.
9 Q. Okay. And did you have any long-term plans for your
10 property as a land owner?
11 A. Yes.
12 Q. Were --
13 A. I'm sorry.
14 Q. That's okay. What were you ---
15 A. Yes, I obtained a 15-year mortgage. My goal was to
16 obviously move Lex-Tech Automotive in there, run that
17 business for 15 years and in hopes that maybe a national
18 chain 15 years after -- you know, after the 15 years would
19 come in and buy the property.
20 Q. And buy the property out right or buy your business?
21 A. Well, ideally I would like -- the plan was for Lex-Tech
22 Automotive -- I knew it was a viable, profitable business.
23 If I could run it for 15 years somebody could come in, buy
24 the business. I could still remain the landowner and
25 collect rent.

1 Q. And as a landowner did the building have value to you
2 before this condemnation action?
3 A. Yes.
4 Q. Okay. Did you -- were there any improvements made to
5 the building, Mr. McAdory?
6 MR. MITCHELL: Objection, ---
7 A. Again, yes.
8 MR. MITCHELL: --- Your Honor.
9 THE COURT: Basis of the objection?
10 MR. MITCHELL: Basis ---
11 THE COURT: Approach, please.
12 (Bench conference at 3:48 p.m.)
13 (Bench conference concluded as follows:)
14 THE COURT: I am going to hear it in camera so I can
15 hear exactly what his testimony is.
16 MR. FERRARA: Do you want to do that now?
17 THE COURT: Yes, that is the plan.
18 (Conclusion of bench conference.)
19 THE COURT: Madam Forelady, ladies and gentlemen, I
20 have a matter of law to take up with the attorneys.
21 During the break please do not discuss the case and
22 please leave your notepads and your exhibit in your seat.
23 Thank you.
24 (WHEREUPON, jury exits courtroom 3:38 p.m.)
25 THE COURT: You may be seated.

1 MS. WALSH: Thank you, Your Honor.
2 THE COURT: You may proceed.
3 **EXAMINATION BY MS. WALSH OF MR. MCADORY - IN CAMERA:**
4 Q. Mr. McAdory, as the landowner when you bought the
5 property did you intend to make any changes to the building?
6 A. To remodel the building. Not necessarily any
7 structural changes. But yes, to remodel and upfit the
8 building to meet our needs.
9 Q. To meet the needs of what?
10 A. Lex-Tech Automotive.
11 Q. And was it your opinion at the time as the landowner
12 the highest and best use of the property was for an auto
13 repair shop?
14 A. Yes.
15 Q. And what type of improvements did you make to the
16 building?
17 A. I made -- I removed some crushed concrete from the back
18 parking lot, added -- I wanted to pave the back parking lot.
19 I was unable to pave it. To pave it, Charleston County
20 denied the permit to pave the back parking lot. So we have
21 to use an alternate product called reclaimed and recycled
22 asphalt.
23 Q. Okay. And when you purchased the property did you know
24 as the landowner that you would need to spend money on
25 improvements?

1 A. Yes.
2 Q. And who paid for these improvement; was it the
3 landowner, you as the landowner, or was it Lex-Tech
4 Automotive?
5 A. It was me as the landowner and Lex-Tech Automotive.
6 Q. And how much did you as the landowner invest into the
7 building on the property?
8 A. Out of my personal checking I wrote a check for $13,658
9 for again the above mentioned back asphalt -- or adding --
10 or reclaimed asphalt to the back of the property.
11 Q. And do you have personal knowledge as to how much money
12 Lex-Tech Automotive invested in improvements on the
13 building?
14 A. Yes, I do.
15 Q. And overall does the building have value to you as the
16 landowner?
17 A. Yes.
18 Q. With respect to the improvements what type of
19 improvements were made to the building?
20 A. To the building itself exterior paint, interior
21 paint -- or basically remodeled the inside offices from
22 floor to ceiling, replaced some damaged panel walls on the
23 exterior of the building, had the exterior of the building
24 painted, had the leaking skylights replaced, had the leaking
25 roof fixed, had the roof repainted, had our sign lenses

1 installed. We added a lot of lighting to the shop area.
2 That required more electrical. So we had to have a lot of
3 the wiring redone inside the building to accommodate our car
4 lifts, wheel balancers, brake lays, air compressors.
5 We had the entire shop sprayed with a product called
6 closed cell foam. We had the interior walls of the shop
7 covered with like a decorative plywood, and we had that
8 painted. We painted the exterior of the floor. We added a
9 bunch of crushed concrete to the back of the property.
10 We picked up -- took the fence down in the back. We
11 realized there was some more available space to use, so we
12 had the fence taken out.
13 We hired a site contractor to come in, remove a couple
14 of trees, remove some over-brush. After that was done the
15 fence contractor came back out and put up a new fence across
16 the back. That required more crushed -- or crushed concrete
17 to be brought in to fill the void. Added a small ten foot
18 by forty foot wide concrete slab across the very back of the
19 shop.
20 Currently the building only had one service bay door.
21 We needed more vehicle access. We had Acme Doors come out
22 and cut another hole in the back of the building, added
23 another door, replaced the existing service bay door that
24 had been there for almost 20 years or more. I am sure I
25 could go on. The list is endless.

1 Q. And did these improvements to the building benefit you
2 as the landowner?
3 A. Yes.
4 Q. And is it in your opinion the highest and best use of
5 the building before the taking was as an auto repair shop in
6 your opinion as the landowner?
7 A. Yes.
8 MS. WALSH: Your Honor, that is the extent.
9 THE COURT: What is the basis of the objection?
10 MR. MITCHELL: The basis is relevance. He keeps
11 blurring the lines between the property owner, the
12 landowner, and the lessee. He keeps saying we, we, we.
13 He mentioned that he personally had put in $13,000 into
14 some paving, and obviously the receipt that I have been
15 provided through discovery has it sold to Lex-Tech
16 Automotive.
17 MS. WALSH: For which he paid for out of his personal
18 checking account.
19 MR. MITCHELL: It is just going to be prejudicial to
20 Charleston County. What he is trying to say is what we
21 talked about earlier is ---
22 THE COURT: You don't get dollar for dollar.
23 MS. WALSH: We under -- we ---
24 THE COURT: He can talk about ---
25 MS. WALSH: He can talk about ---

1 THE COURT: But it is the same thing. You can -- he
2 can give the diminution in value. He can testify about how
3 he feels his property has been devalued, that he cannot --
4 he feels that he cannot -- there is a difference between
5 saying I -- I don't have a problem and I don't think in
6 terms of the evidentiary rules there is a problem with him
7 saying I bought this property, I upfitted it for the best
8 use.
9 How he upfitted it really does not become relevant
10 because he can't be compensated for it. The issue is I
11 bought it for this purpose, I upfitted it for this purpose,
12 I feel now I cannot use it for that purpose and this is how
13 I was damaged.
14 But, you know, you don't get a dollar for dollar value
15 for everything you did to property to increase its value.
16 It has to be reflected in some evaluation as having -- the
17 only way I could even tangentially see it as relevant is if
18 he bought it for one price but then the fair market value
19 then increased somehow as a result of that -- and I lost my
20 train of thought. Because that really wasn't what I was
21 intending to say. Because the value that is relevant and
22 germane is the value at the time of the taking.
23 So you would look at whether there was a diminution in
24 value from that point as a result of something that was
25 caused by the condemnation.

1 So again we get back to the whole logic that I feel
2 like my property is worth all of this because I did all of
3 this. Which I mean that is how a layperson would look at
4 it. But that is not supported in the law.
5 He can of course testify as to what he feels the value
6 of his property is, why he bought it, what use he intended
7 to have for it, and how he now feels he cannot use it for
8 that purpose. All of that is within the ambit of his lay
9 opinion.
10 But what he spent, it is not germane to anything. He
11 can't be -- he can't be compensated for it. He can't get
12 $13,658 back in addition to what the fair market value is.
13 MS. WALSH: And we have already established the fact
14 that he is seeking just compensation for $150,000 which is
15 the difference between the 375 and the 225 which is the
16 after value of the property that was given by Charleston
17 County.
18 This is just going to show ---
19 THE COURT: What you pay for property is not the fair
20 market value. You could pay 325 ---
21 MS. WALSH: He can testify as the landowner though as
22 to what he thinks ---
23 THE COURT: Please don't interrupt the court.
24 MS. WALSH: I am sorry, Your Honor.
25 THE COURT: He can testify as to what he thinks it is

1 worth. But fair market value is something that is
2 calculable. It is something that is refined down to a
3 science and a formula.
4 People overpay for property all the time. If he paid
5 375 for it but the fair market value based on the
6 comparables was only 300,000 he is not entitled to 375 if he
7 made a poor business decision or somebody hoodooed him,
8 which happens all the time in real estate. That is why it
9 is called puffing, bargaining and then you don't have a deal
10 until it is reduced to a writing.
11 He is entitled to whatever the fair market value is of
12 the property at the time he purchased it and any diminution
13 in value as a result of what the County did to it, less any
14 improvements that resulted to him as a result of what the
15 County did to it.
16 Which I haven't heard any testimony yet that the
17 property somehow was improved because of some infrastructure
18 or otherwise pursuant to the statute that the County put in.
19 But it becomes almost like a red herring when you start
20 saying well I paid this much for that and I paid this much
21 for that. Because then it confuses the jury in terms of
22 once they have to be instructed that somehow I think that
23 you know the property let's take it in the light most
24 favorable to him the jury believes the property is worth 375
25 and then they start nickel and diming and saying well he

1 paid 13,000 for this so it increases it by that.
2 Well, that is not how the calcu- -- that is not fair
3 market value. You don't get a dollar for dollar improvement
4 for everything you put in a property. There is a
5 calculation that you -- that is -- that you use to determine
6 fair market value.
7 MR. MITCHELL: And Your Honor ---
8 THE COURT: And he can testify from his lay opinion as
9 to what he feels the diminution in the value of his property
10 is, you know, because the law allows that. And I am not
11 going to restrict him from doing that.
12 But to go through every amount of money he feels he put
13 into it and that somehow he should be compensated for that
14 is misleading because it is not accurate and it is not
15 supported by any legal theory. It is not supported by any
16 statute, any case law, anything at least that I can find in
17 the research.
18 Now he can testify that I did all these things to upfit
19 my building because I wanted to use it as a car repair
20 facility. I don't have a problem with that.
21 But when you start getting into all these figures it is
22 problematic because he can't get compensated for that.
23 MR. MITCHELL: Well, Your Honor, I still have a problem
24 with him even including that because when he talked about
25 the repaving or the $13,000, that appeared to be the invoice

1 date was January 13 -- or January 3rd, 2013. The day of the
2 taking was July 11th, 2012. So purely this was after the
3 County ---
4 THE COURT: Oh, you are saying he repaved his facility
5 after ---
6 MR. MITCHELL: And they are trying to imply that ---
7 MS. WALSH: And he did ---
8 MR. MITCHELL: --- those improvements ---
9 MS. WALSH: Well, we haven't come out with ---
10 MR. MITCHELL: Excuse me, Ms. Walsh. Those
11 improvements were done and add to the value of the before
12 are trying to bolster what his value is in the before.
13 THE COURT: Or is he saying he had to do it because now
14 he needed to park in the back because ya'll took his parking
15 spaces in front; is that what he is ---
16 MR. MITCHELL: They haven't said that yet, Your Honor.
17 But ---
18 THE COURT: Well, they haven't connected the dots. I
19 don't know. And I don't -- I don't know that it necessarily
20 matters unless they can tie it to diminution in value.
21 MR. MITCHELL: Thank you, Your Honor.
22 THE COURT: Or unless they can tie it to somehow this
23 has precluded my use of the property, which it seems to be
24 in an absent position because if I can't use my property
25 because you took my parking it really wouldn't matter if you

1 paved the back. Because that seems to me contrary to your
2 position. Because if you could put parking in the back that
3 means you haven't been deprived really of the use because
4 you can park in the back.
5 MS. WALSH: But they can't ---
6 THE COURT: I don't know.
7 MS. WALSH: Which is what -- which is what ---
8 THE COURT: I am just telling you based on what I have
9 heard so far. He can testify -- I think what the case law
10 clearly supports that a landowner ....
11 (Pause for court's review.)
12 MS. WALSH: Your Honor, may I put something on the
13 record?
14 THE COURT: Not while I am reading. I am getting ready
15 to rule on the matter. I will allow you to speak in a
16 moment.
17 (Pause for court's review.)
18 THE COURT: Yes, ma'am.
19 MS. WALSH: Thank you, Your Honor. I just wanted to
20 point out -- okay, South Carolina Code 28-2-340, for
21 purposes of -- basically evidence may be admitted in a
22 condemnation trial from purposes of determining the value of
23 the land sought and affixing just compensation.
24 The statute goes on to list five types of evidence.
25 And it's -- it affirmatively says in addition to other

1 evidence which may be relevant, material, and competent may
2 be admitted.
3 If you move on from there to South Carolina State
4 Highway Department versus Wilson it's 175 S.E.2d 391 Supreme
5 Court opinion from 1970 where it states the general rule of
6 the landowner who is familiar with his property and its
7 value is allowed to give his or her estimate as to the value
8 of the land and damages thereto even though the owner be
9 not -- not be an expert.
10 Further it goes on to say where the witness bases an
11 opinion entirely or chiefly on incompetent or inadmissible
12 matters the testimony must be rejected; however, if he bases
13 it on his general personal knowledge and experience he can
14 attest to that fact.
15 Mr. McAdory is the landowner. Furthermore, under
16 condemnations landowners can testify as to highest and best
17 use. Highest and best use for a property ---
18 THE COURT: I hate to interrupt you, but nothing you
19 are saying is contrary to what I have already said and
20 articulated for the record. Now -- because I'm not going
21 to expend a whole bunch of more time on this because we are
22 beating a dead horse.
23 The statute is very clear. The statute is not
24 ambiguous. And the statute that is applicable is 28-237:
25 To determine just compensation only the value of the

1 property to be taken, any diminution in the value of the
2 landowner's remaining property and any benefits as provided
3 in 28-2-360 may be considered.
4 The landowner is entitled to the value of the property
5 under its most advantageous or profitable use including any
6 use reasonably anticipated in the future.
7 I have not restricted him from testifying as to what he
8 thought the best and most reasonable use is. I have not
9 restricted him from testifying his lay opinion what he
10 believes the value of his property to be.
11 However, he is not going to speculate on a dollar for
12 dollar basis how he feels the property was improved or how
13 he is entitled to recover a dollar for dollar amount. It is
14 not allowed by the law. It is not supported by any real
15 estate principle that I am aware of in terms of determining
16 the fair market value of property.
17 So we will move from that point on. Okay. Are we
18 ready?
19 MS. WALSH: So we will leave numbers out?
20 THE COURT: I just don't -- first of all, you haven't
21 established that it was done before. We have evidence of
22 what he has testified to happened after the condemnation.
23 So it wouldn't be relevant.
24 MS. WALSH: Well ---
25 THE COURT: It doesn't relate to diminution in value.

1 MS. WALSH: I'm going -- we started them in January
2 2011. We were going to get to that point. I was just
3 going -- waiting for your court's ruling with respect ---
4 THE COURT: Actually the questions that you asked based
5 on the objection many of the things he testified to happened
6 after the condemnation including the paving of the back of
7 the property, correct?
8 MS. WALSH: No, that's -- I'm sorry, Your Honor, that
9 is not correct. He started all of those improvements that
10 he listed in January of 2011 and completed those in August
11 2012.
12 THE COURT: When was the condemnation?
13 MS. WALSH: The condemnation was July 11, 2012. He
14 started all the improvements in January of 2011.
15 THE COURT: But some of the improvements he testified
16 to happened after the operative date which is July 11th.
17 MS. WALSH: And the only thing that would have happened
18 after the operative date would have been the paving in the
19 rear which was a result of taking. He attempted to pave it
20 but the County ---
21 THE COURT: It would still have to be tied to
22 diminution in value.
23 MS. WALSH: So we will stick to improvements before the
24 date of condemnation?
25 THE COURT: Only to the extent that it relates to him

1 updating it for its most advantageous use. In other words,
2 for the purpose for which he bought the property.
3 But he is not going to be able to testify that I spent
4 this or I spent that. The other problem you have is that I
5 don't have any independent proof other than his word that he
6 spent this money. I don't know if the company spent the
7 money, whether he spent the money.
8 MS. WALSH: He testified that he already ---
9 THE COURT: I understand that. But you need to have
10 something extrinsic, some canceled checks, something. You
11 can't -- because there is clearly an intermingling between
12 these two entities where he has paid for something, the
13 company is reimbursing him; or he is paying -- in the grand
14 scheme of things, it doesn't matter because he does not get
15 a dollar for dollar credit. Fair market value is fair
16 market value. It is what a willing seller will take and
17 what a willing buyer will pay.
18 MR. MITCHELL: Your Honor.
19 THE COURT: Yes.
20 MR. MITCHELL: I am still concerned about him blurring
21 the lines between him being a Lex-Tech sole member and being
22 the landowner. And I am afraid it is confusing the jury to
23 the point that it is all ---
24 THE COURT: I really don't -- I guess I am a little
25 confused as to why Lex-Tech is being mentioned at all except

1 ex to the extent that he runs that business and that is the
2 purpose for which he bought the property which was to
3 operate this business.
4 MR. MITCHELL: And I agree, Your Honor ---
5 THE COURT: They have no standing. They are not a
6 party. They can't be reimbursed for anything. If they want
7 to bring an action against him later for some equitable
8 distribution of the proceeds pursuant to the statute, they
9 can do that.
10 MS. WALSH: Him bring it against himself?
11 THE COURT: Sure can. It is a separate entity. And I
12 will caution you again is I wouldn't want you to run into
13 any difficulty later. If somebody slips on that property,
14 somebody has an accident on that property, and they sue that
15 entity he now has sworn testimony basically that he doesn't
16 operate his business the way it is supposed to operate
17 statutorily.
18 So it creates a problem for him later if he wants to
19 come back into court later and say Lex-Tech is a separate
20 entity and I really am just the sole -- you know, I am the
21 only shareholder but Lex-Tech is a separate entity.
22 You just -- it is a very delicate, fine line he is
23 walking. And I can see down the line because I don't have
24 to win. I am not an advocate. I can kind of see the end at
25 the beginning. So he needs to be very careful as to what he

1 is representing in sworn testimony about how he has been
2 operating this entity.
3 MS. WALSH: The only thing he has testified to, Your
4 Honor, ---
5 THE COURT: I didn't ---
6 MS. WALSH: --- as to ---
7 THE COURT: I didn't ---
8 MS. WALSH: I just respectfully disagree.
9 THE COURT: I didn't raise it for any discussion or
10 debate. It doesn't matter to me.
11 MR. MITCHELL: Your Honor, I am just slow on the
12 uptake. Is that -- are you going to allow him to testify as
13 to Lex-Tech or ---
14 THE COURT: He is to testify as to the person who
15 purchased this property for a particular purpose. He can
16 testify that I bought it to run an automotive business.
17 That happens to be in the name Lex-Tech.
18 He has already testified that it is an LLC for which he
19 is the sole shareholder, that his wife is the secretary
20 basically or the office manager. Anything beyond that
21 really is not relevant or germane to anything.
22 He is the proper party that has been sued. He is the
23 owner. For whatever reason even though he and Lex-Tech are
24 joint owners on the title they were not sued. I don't know
25 why.

1 MS. WALSH: It is not the title. It is the mortgage
2 note. But yes.
3 THE COURT: Either way. It is still a whole -- it is
4 still a party in interest. I mean they could have been
5 brought into this action. There is nothing that precluded
6 either of you from doing that. You didn't.
7 So we are left with him being the record owner of the
8 property. Under the statute he is the only person that gets
9 compensated. If there is some other entity that feels they
10 are entitled to some of the proceeds that is why we have
11 that other statute and they can sue him if they want to to
12 equitably apportion the money.
13 But if I follow his logic, it really doesn't matter.
14 It is all going into one pile, to him. Because he says even
15 though he has Lex-Tech he is the sole shareholder, the sole
16 owner, and basically he is -- even though he has this
17 corporate entity he really is operating it as a sole
18 proprietorship. So that's kind of where we are with the
19 testimony. So it really doesn't matter really at this
20 point.
21 But he is not going to be able to testify that Lex-Tech
22 is entitled to recoup something. They are not a party to
23 this action. Under case law they are a separate, corporate,
24 limited liability corporation which can be sued and can sue.
25 And they are not a party.

1 So I think we have expended enough energy and time.
2 And I think we need to try to make some benefit of the rest
3 of our afternoon since it is now 4:12. Are we ready to
4 proceed?
5 MR. MITCHELL: Yes, Your Honor.
6 THE COURT: You would have something else?
7 MR. MITCHELL: No. Thank you, Your Honor.
8 THE COURT: Are we ready, Ms. Walsh?
9 MS. WALSH: Yes, Your Honor. Just please let the
10 record reflect that please note our exception to your
11 ruling.
12 THE COURT: The court has already made its ruling. I
13 have already heard argument. Your objections are already
14 preserved. The rules provide that once the court has ruled
15 there is to be no further argument or comment.
16 Are we ready to proceed?
17 MS. WALSH: We are.
18 THE COURT: Thank you. Please bring in the jury.
19 (WHEREUPON, pause awaiting jury.)
20 THE COURT: I want to make sure my ruling is clear
21 which is he can testify as to the actual value -- his lay
22 opinion as to actual value of the land, any special damages
23 he feels he has suffered as a result to the remainder of his
24 land, which is just another way of saying the diminution in
25 value.

1 As I understand it, there are no benefits that accrue
2 to the property as a result of anything the County has done,
3 in other words to improve the value of the property.
4 He can testify as to the best -- let me make sure the
5 exact language -- the highest and best use of the property.
6 I am going to use the exact language: the value of the
7 property taken, the diminution in the value to his
8 remainder, any benefits that he has accrued - which there is
9 no testimony at this point or any indication that he has
10 gotten any benefit - and that his lay opinion as to what he
11 believed to be the most advantageous or profitable use of
12 the property and if he can reason- -- if there is some
13 reasonably anticipated use of a higher or best use or for
14 profitable use of the property in the future, which
15 includes -- he can say I bought this property for a
16 particular purpose and now I feel like it is devalued
17 because I can't use it for that purpose. He can testify
18 that I upfitted it for this particular purpose. But it
19 needs to be confined to the period prior to the actual
20 condemnation.
21 MS. WALSH: And can he ---
22 THE COURT: The actual dollar amounts for that really
23 are not relevant because he is not entitled to any increase
24 in valuation based on that.
25 So the sole issue that becomes relevant is the purpose

1 for which he purchased the property and how he feels he
2 cannot be made whole because he can no longer use it for
3 that purpose.
4 Are we all clear?
5 MR. MITCHELL: Yes, Your Honor.
6 MS. WALSH: And can he testify as to the type of
7 improvements on the property up until the date of
8 condemnation?
9 THE COURT: Yes, but not the val- -- not what --
10 MS. WALSH: Not the value.
11 THE COURT: --- what it cost him.
12 MS. WALSH: We are leaving numbers out.
13 THE COURT: And some of those things are not upfitting.
14 A leaky sky light it not upfitting. That is deferred
15 maintenance.
16 MR. MITCHELL: Absolutely, Your Honor. And he also ---
17 THE COURT: You know, those are kind of things -- a new
18 roof, I don't know. I mean did he inspect the property
19 before and know the roof was bad; did he get some kind of
20 credit on the property to fix the roof; I have no idea.
21 But when we start talking about upfitting that is when
22 you start putting lifts in a property, you start reorienting
23 openings, you put in new offices, things like that; not
24 ordinary deferred maintenance.
25 I -- so to the extent that you look at that list. Shop

1 widening certainly would be. I don't know if foam spray
2 insulation would be. I have no idea of knowing whether that
3 is essential to operating a car business.
4 But his previous testimony was that the reason he was
5 interested in the property was the high volume, its
6 commercial location and the fact that it would require very
7 minimal upfitting since it had been used for that purpose in
8 the past.
9 So you would -- he would -- of course we have already
10 determined that the reclaimed asphalt would not be
11 applicable since that happened after the date of the
12 condemnation. Unless that relates to diminution in value.
13 MS. WALSH: The reclaimed asphalt will go to -- and
14 just so Your Honor understands as to the part of the reason
15 and why in his opinion it has changed to highest and best
16 use in the after, because he could not repave and he
17 couldn't make it safe for customers because it is ---
18 THE COURT: He can ---
19 MS. WALSH: --- asphalt.
20 THE COURT: --- testify to that.
21 MS. WALSH: Thank you. None of the ---
22 THE COURT: But the value of it ---
23 MS. WALSH: I understand.
24 THE COURT: Yeah.
25 MS. WALSH: The numbers are out. I understand.

1 THE COURT: Yeah, I don't think the numbers -- I think
2 that goes to the whole of the diminution in value he feels
3 he suffered to his property.
4 Office remodeling he said it was office remodeling.
5 But then he just basically said he repainted the offices and
6 redid them.
7 MS. WALSH: We have ---
8 THE COURT: I don't know if that is -- I mean I think
9 arguable that could be a part of upfitting. But you need to
10 limit those things to things that actually were necessary
11 for the upfitting of the building for its best use.
12 MS. WALSH: And we have photos that we would like to
13 use which Your Honor may or may not admit into evidence to
14 show it. And if not ---
15 THE COURT: They will have to ---
16 MS. WALSH: --- we would like to use them as
17 demonstrative.
18 THE COURT: You know, again, I am not an advocate.
19 They will have to make a contemporaneous objection.
20 Are you standing for a reason?
21 MR. FERRARA: No, ma'am. Just reposition, Your Honor.
22 Tired of sitting so.
23 THE COURT: When people stand you make me nervous.
24 MR. FERRARA: Yes, Your Honor.
25 THE COURT: I think you want to tell me something.

1 All right. You may bring in the jury.
2 (WHEREUPON, jurors enters courtroom 4:20 p.m.)
3 THE CLERK: All jurors are present, Your Honor.
4 THE COURT: You may be seated. Ladies and gentlemen,
5 we appreciate your patience. We will now resume testimony
6 of the witness. You may proceed.
7 MS. WALSH: Thank you, Your Honor.
8 THE COURT: You are welcome.
9 **RESUME DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:**
10 Q. Mr. McAdory, the date of filing this condemnation, to
11 your understanding, was that not July 11th of 2012?
12 A. Yes.
13 Q. Okay. And you bought the property on January of
14 2011; ---
15 A. Yes.
16 Q. --- is that the closing?
17 A. Yes.
18 Q. And prior -- during the time from January of 2011
19 until July 12 -- July 11th of 2012 did you make any upfits
20 or improvements to the building on the property?
21 A. Yes, I did.
22 Q. Okay. And can you please describe the upfitting that
23 you did and the improvements you made to the building on the
24 property during that time period, please.
25 A. We reconfigured the front offices, remodeled the front

1 offices. We added three car lifts to the shop area. We
2 added a -- lighting to the interior of the shop. That
3 required more electrical and the -- most of the electrical
4 to be redone in order to house the three car lifts, the
5 brake lathe, the wheel balancer, the air compressor and
6 other miscellaneous shop equipment. So it required pretty
7 extensive electric work.
8 Q. And -- I'm sorry, go ahead.
9 A. We had a door. The back of the property is how the --
10 how we enter and exit the shop. Those big doors are not
11 visible from the street. You would never know they were
12 there unless you walked around the back of the property.
13 When we got there there was only one door there on the
14 far right side of the building. We saw that that was not
15 utilizing the space correctly, so we removed -- or had --
16 the opposing side of the back of the building had an opening
17 cut. Installed another door. More vehicles in the shop,
18 more vehicle access. So that required a hole cut in the
19 back of the building, a new door.
20 The other door was falling apart. We had to -- had the
21 other door replaced. We painted the floors of the inside of
22 the shop. Set the -- one of the offices up that I had
23 talked about we reconfigured we turned that office into a
24 parts room.
25 We house a lot of parts on site so that repairs are

1 done quickly and we have parts on hand. So we converted an
2 office to a parts room.
3 The back parking lot was full of crushed con- -- or was
4 a mud pit when we first got there. When the contractors
5 were there we had to bring in a lot of crushed concrete
6 because everybody was getting stuck. After about two or
7 three days it was a mud pit. So we brought in a bunch of
8 crushed asphalt -- or crushed concrete so that we could
9 actually utilize the back area.
10 The vehicle -- the back of the property we realized
11 after we got there that it had an available space behind the
12 fence that wasn't being utilized. So we had the back fence
13 removed.
14 We had a site contractor come in and clear the debris
15 and the trees and the stumps, move the fence back roughly 10
16 or 13 feet.
17 That basically allowed us another row of vehicles in
18 the back, allowed us more room to store more vehicles across
19 the back.
20 Vehicles are the nature of my business. We have to
21 have places to put vehicles. And as far as the upfitting
22 that is really about it.
23 Q. And as a landowner do these improvements benefit you as
24 a landowner?
25 A. Yes.

1 Q. And in your opinion as a landowner did these
2 improvements in upfitting add value to your property?
3 A. Yes.
4 Q. When you bought the property in January of 2011 did you
5 as the landowner take photos of the property?
6 A. Yes, we did.
7 Q. And during the time of this upfitting and renovations
8 did you as the landowner take photos of the property?
9 A. I'm sorry, say the dates again.
10 Q. During the time of your renovations and repairs?
11 A. Yes, yes, we did. From before, during, and then after.
12 Q. Okay.
13 MS. WALSH: Your Honor, may I approach?
14 THE COURT: You may.
15 MS. WALSH: Thank you.
16 MR. MITCHELL: May we approach, Your Honor?
17 THE COURT: Yes, you may.
18 (WHEREUPON, bench conference and review of documents at
19 4:25 p.m.)
20 THE COURT: Madam Forelady, ladies and gentlemen, I
21 have a very brief matter of law to take up outside of your
22 presence. During this break please do not discuss the case
23 among yourself and please leave your notepads in your seats.
24 (WHEREUPON, jury exits the courtroom 4:27 p.m.)
25 THE COURT: What is the County's objection to Exhibit

1 Number 1? Well, I guess the question is for what purpose is
2 it being offered.
3 MS. WALSH: It is being offered to show the condition
4 of the building when the landowner bought the property.
5 THE COURT: How is that relevant to fair market value
6 or diminution of value? They are not contesting what he
7 paid for the property, are they?
8 MS. WALSH: No, but it is going to show the before and
9 after value -- it is going to show the before he bought the
10 property --
11 THE COURT: Doesn't have any relation to value. How is
12 it -- how does that have any relationship to what it was
13 worth?
14 MS. WALSH: The improvements and the upfits that he
15 does into the property he has already testified adds value
16 to the property. This is just going to be used ---
17 THE COURT: That is still him trying to get a dollar
18 for dollar value for what he contends ---
19 MS. WALSH: But we are not entering ---
20 THE COURT: --- he put in.
21 MS. WALSH: --- dollars amounts.
22 THE COURT: I -- yeah, I haven't really ---
23 MS. WALSH: And it is for demonstrative purposes.
24 THE COURT: No, it is not for demonstrative purposes.
25 Because you are asking that it be admitted into evidence and

1 that the jury rely on it as some evidence of its value.
2 MS. WALSH: Well, initially obviously I am going to try
3 to get it into evidence and Your Honor will rule. And then
4 if Your Honor rules against me I am going to ask it be
5 admitted for demonstrative purposes. Not admitted but just
6 for use of demonstrative to show the jury what the property
7 looked like when he bought it, the type of updating that he
8 did.
9 Because the pictures reflect the changes in the office
10 space. It shows the rear bay door as only a single one. It
11 has moved into two. It shows the rear parking lot which was
12 mud. Then he eventually outfitted and spent money,
13 etcetera. But we are not going into dollar signs.
14 It also shows the lifts that were added. It goes from
15 zero lifts to two lifts to three lifts on the property.
16 Completely ---
17 THE COURT: Are you going to have any expert testify
18 that somehow this has increased the fair market value of the
19 property or that there was any diminution in value as a
20 result?
21 MS. WALSH: No, just the landowner, Your Honor, because
22 he can testify as to the value ---
23 THE COURT: I didn't say he couldn't.
24 MS. WALSH: I understand, Your Honor.
25 THE COURT: But you know what I think: I think my

1 house is worth a half a million dollars to me. It is
2 probably worth a tenth of that. But this is what it is
3 worth to me because I like it and what I think I have put in
4 it.
5 But that -- the average person walking through my house
6 probably would hurt my feelings if there was a hidden camera
7 telling me what they think needed to be fixed, changed, and
8 what they had actually paid for it. That is probably why I
9 would not obsess.
10 What is the County's objection to Number 1?
11 MR. MITCHELL: Your Honor, the prejudice to the jury
12 outweighs its probative value.
13 THE COURT: You need to be more specific than that for
14 me. What is your actual objection to it? That is a boiler
15 plate objection.
16 MR. MITCHELL: I have no objection, Your Honor.
17 THE COURT: All right. So Number 1 comes in without
18 objection, correct? Number 1 will be marked and admitted
19 without objection.
20 (Defendant Number 1 was previously marked.)
21 (Defendant Number 1 was admitted into evidence.)
22 THE COURT: What is your objection to Number 2?
23 MR. MITCHELL: Number 2 it is ---
24 THE COURT: Why don't we lump 2, 3, all together.
25 Because I assume those are before pictures and during

1 construction pictures.
2 MS. WALSH: And the dates are at the bottom. It is
3 signed by the landowner, Your Honor.
4 (Review of documents.)
5 MS. WALSH: Thank you for your patience, Your Honor.
6 MR. MITCHELL: Your Honor ---
7 THE COURT: Not a worry.
8 MR. MITCHELL: Your Honor, first, these do not go to
9 fair market value. These go to the condition of the
10 building.
11 Second, your former ruling was about upfit of the
12 building. You were talking about lifts and that sort of
13 equipment. This is office space. This is not upfits for a
14 garage for his specific highest and best use.
15 THE COURT: Okay. We will set those aside for now.
16 What about Number 4? Number 4 seems to me to be an accurate
17 reflection of the back of the property. What is the
18 objection of that?
19 MR. MITCHELL: I have no objection, Your Honor.
20 THE COURT: Number 4 will be marked and admitted
21 without objection.
22 (Defendant Exhibit Number 4, photo, was previously marked
23 for identification.)
24 (Defendant Exhibit Number 4 was admitted into evidence.)
25 THE COURT: Number 5 is sort of cumulative, doesn't it?

1 Aren't there several pictures that show the back of the
2 property?
3 MS. WALSH: Well, one shows -- this one shows the back
4 of the property but doesn't show the rear doors. One of
5 them has one bay door. And that was in the before. And he
6 has already testified that he added two doors in the back so
7 we could operate two -- three forklifts for his repair shop
8 and have two modes of entrance for his repair vehicles. And
9 he just testified that he upfitted ---
10 THE COURT: Can I see the other one again ---
11 MS. WALSH: Yes, ma'am.
12 THE COURT: --- that I just gave you?
13 MS. WALSH: Sure.
14 (Document presented to the court.)
15 THE COURT: Thank you. Oh, that is just -- okay, I
16 see.
17 MR. WALSH: Yes, thank you, Your Honor.
18 THE COURT: Is there an objection to Number 5?
19 MR. MITCHELL: Which one are we ---
20 THE COURT: This one (indicating).
21 MR. MITCHELL: Yes, Your Honor -- oh ---
22 THE COURT: Okay. I will put that aside.
23 MR. MITCHELL: Yes, Your Honor, there is a pile of
24 rubbish there from obvious construction. And it still
25 doesn't go to the evidence.

1 THE COURT: We will see. I will think about that.
2 What is the objection to 6, 7, 8, 9; that all shows I assume
3 some stage of renovation?
4 MR. MITCHELL: Yes, Your Honor. And the objection is
5 the same as before. This is not showing upfits. This is
6 showing -- it goes to the condition of the building and the
7 repairs that they had to do at the time, not to the upfit to
8 get to the highest and best use that he testified to.
9 MS. WALSH: May I see exactly.
10 THE COURT: Yeah, I am going to set those aside for the
11 moment.
12 MS. WALSH: Your Honor, Number 6, 7, 8, and 9 is
13 showing the upfits to the building because it is the rear
14 portion of the building as to the repair shop during the
15 process of the renovations. It also will show ---
16 THE COURT: It actually just shows it in its condition.
17 It doesn't show any changes to it.
18 MS. WALSH: Well, it is going to show ---
19 THE COURT: It just shows what it looked like before.
20 MS. WALSH: Right. And then there's obviously
21 photographs that are in there that have three lifts that
22 shows exactly what it was before and then he upfitted and he
23 added three lifts.
24 THE COURT: Yeah.
25 MS. WALSH: So it shows exactly the type of work the

1 landowner they put into the building.
2 THE COURT: You can set those aside for now. I need to
3 think about those. Number 10 is sort of cumulative, isn't
4 it; don't you already have a picture of the front of the
5 building?
6 MS. WALSH: Can I see which picture you are talking
7 about?
8 MR. MITCHE: Oh, here.
9 MS. WALSH: This was actually during the outfitting.
10 Because as you note from the very beginning ---
11 THE COURT: I don't think it makes a difference. I
12 mean whether it was green or cream what difference does it
13 make?
14 MS. WALSH: Very good.
15 THE COURT: Yeah, I don't -- I think it is cumulative.
16 It is the same picture as Number 1.
17 MS. WALSH: And actually, Your Honor, though, I would
18 like to make note with respect to Number 10 that the
19 landowner would testify that he actually did paving and did
20 as such to the front to make it suitable ---
21 THE COURT: But the picture doesn't show that, does it?
22 MS. WALSH: Well, it is in the before; and then it
23 actually does it in the after.
24 THE COURT: Yeah, well, if you ---
25 MS. WALSH: But if we are going to go to the parking

1 lot ---
2 THE COURT: I just think it is cumulative. It just
3 shows the same front of the building ---
4 MS. WALSH: Sure.
5 THE COURT: --- with a different color. What is the
6 objection to Number 11?
7 MR. MITCHELL: Number 11 I think it shows the lifts,
8 and it shows they are updating. I have no objection.
9 THE COURT: Okay. Number 11 will come in without
10 objection.
11 (Defendant Number 11, photo, was marked for identification.)
12 (Defendant Number 11 was admitted into evidence.)
13 THE COURT: What is the objection to Number 12?
14 MR. MITCHELL: Number 12 is back to the same thing.
15 First off, it is cumulative. It shows the renovations being
16 done, not the upfits that we discussed.
17 THE COURT: How is this relevant to fair market value?
18 I just -- it just shows a hallway with some exposed wiring.
19 I just -- I guess I am trying ---
20 MS. WALSH: He did -- he has already testified he had
21 to do a complete and total electrical overall of the
22 building in order -- and this is just to show that he did --
23 it is just comporting with his testimony.
24 THE COURT: Yeah, but how does it tie to fair market
25 value?

1 MS. WALSH: Because all of the improvements in
2 upfitting he has already testified to -- he has testified it
3 benefits and adds value to his property.
4 THE COURT: What is the objection to Number 13? I
5 think that shows the use of it, if he says he parks the
6 vehicles in the back.
7 MR. MITCHELL: Yes, Your Honor, it shows a lot of
8 parking spaces. I like that. I have no objection.
9 THE COURT: All right. Number 13 is marked and
10 admitted without objection.
11 (Defendant Number 13, photo, was previously marked.)
12 (Defendant Number 13 was admitted into evidence.)
13 THE COURT: What is the objection to Number 14?
14 MR. MITCHELL: It goes to the renovations of the
15 building, not ---
16 THE COURT: I think it shows the interior of his
17 business. I mean what is the big deal?
18 MR. MITCHELL: Well, ---
19 MS. WALSH: He outfitted offices.
20 MR. MITCHELL: --- first, Your Honor, it is -- it shows
21 the interior of his building and not necessarily his
22 business. Because Lex-Tech is the business. But just
23 besides that distinction ---
24 MS. WALSH: He owns the building. It adds value and
25 benefit to him. He has testified as such.

1 THE COURT: Well, if you moved into any building you
2 are going -- I know me. I would rip everything out and redo
3 it because that is just my personality. I need things that
4 are esthetically pleasing. What like somebody else might be
5 able to tolerate, I couldn't.
6 I don't know than that actually improves the value of
7 the building. It improves my quality-of-life. I don't know
8 that it necessarily improves the quality or the fair market
9 value of the building.
10 MS. WALSH: And the landowner can testify to that. And
11 he ---
12 THE COURT: What he can testify to and what is relevant
13 and germane to fair market value are different things. And
14 so my question is how does this tie into fair value of -- or
15 diminution in value.
16 MR. MITCHELL: Your Honor, it goes straight to the
17 condition. It is back to the same discussion we have had
18 numerous times.
19 THE COURT: I don't know that there is any harm in him
20 showing the interior -- I guess I am just at a loss as to
21 why it really matters ---
22 MS. WALSH: Because what ---
23 THE COURT: --- showing the interior ---
24 MS. WALSH: --- it is going -- what it is eventually
25 going to matter, Your Honor, is that he -- one, he is --

1 just bear with me and just the court indulgence. One ---
2 THE COURT: Actually I was asking Mr. Mitchell that
3 question and not you.
4 MR. MITCHELL: Could you restate ---
5 THE COURT: I said I don't understand what the real rub
6 is. What difference does it make what it looks like on the
7 inside. I mean it is a fair and accurate representation of
8 what the business looks like.
9 MR. MITCHELL: I agree with Your Honor. I have no
10 objection.
11 THE COURT: Fourteen and fifteen will come in without
12 objection.
13 MS. WALSH: Thank you, Your Honor.
14 THE COURT: You are welcome.
15 (Defendant Exhibit 14, photo, was previously marked for
16 identification.)
17 (Defendant Exhibit 14 was admitted into evidence.)
18 (Defendant Exhibit 15, photo, was previously marked for
19 identification.)
20 (Defendant Exhibit 15 was admitted into evidence.)
21 THE COURT: What is the objection to Number 16?
22 MR. MITCHELL: I am not sure what they are trying to
23 depict in this.
24 MS. WALSH: It shows three lifts instead of two. It
25 was an ongoing progression of his upfitting of the building.

1 MR. MITCHELL: It is cumulative. We have already shown
2 that he has put lifts in it.
3 THE COURT: I don't think there are any pic -- are
4 there any pictures --
5 MS. WALSH: Yes, Your Honor.
6 THE COURT: --- in that stack of lifts?
7 MS. WALSH: I'm sorry. Yes.
8 THE COURT: Which number is that?
9 MS. WALSH: It is Number 11.
10 THE COURT: Can I see it right quick?
11 MS. WALSH: Yes, Your Honor.
12 (Document provided to the court.)
13 THE COURT: You can pick between Number 11 and Number
14 16.
15 MS. WALSH: Okay.
16 THE COURT: Because they are cumulative.
17 (Cell phone interruption.)
18 THE COURT: Do you want to -- do you want to substitute
19 16 for 11?
20 MS. WALSH: Yes, Your Honor, I would.
21 THE COURT: Which I think is a more accurate picture.
22 MS. WALSH: Thank you very much.
23 THE COURT: Number 16 will be marked and admitted
24 without objection.
25 (Defendant Exhibit Number 16, photo, was previously marked

1 for identification.)
2 (Defendant Exhibit Number 16 was admitted into evidence.)
3 THE COURT: And what is the objection to 17? We have
4 already seen this picture.
5 MR. MITCHELL: I have no objection with it, Your Honor.
6 THE COURT: All right. Seventeen is marked and
7 admitted without objection.
8 MS. WALSH: Thank you, Your Honor.
9 THE COURT: You are welcome.
10 (Defendant Exhibit 17, photo, was previously marked for
11 identification.)
12 (Defendant Exhibit 17 was admitted into evidence.)
13 THE COURT: Now let's deal with these other things.
14 Two and three are not relevant. They will be marked for ID
15 only. They do not add any probative value regarding the
16 fair market value of the property or diminution in value of
17 the property.
18 (Defendant Exhibit 2, previously marked for identification.)
19 (Defendant Exhibit 3, photo, was previously marked for
20 identification.)
21 THE COURT: Six, seven, eight, and nine are fairly
22 cumulative because the whole purpose of what we were trying
23 to -- what the landowner wanted to show were the lifts and
24 the modifications to the property. And we already have
25 pictures in that are showing that. So those would be marked

1 for ID only.
2 (Defendant's Exhibit 6, photo, was previously marked for
3 identification.)
4 (Defendant's Exhibit 7, photo, was previously marked for
5 identification.)
6 (Defendant's Exhibit 8, photo, was previously marked for
7 identification.)
8 (Defendant's Exhibit 9, photo, was previously marked for
9 identification.)
10 THE COURT: We have already determined that Number 11
11 is cumulative to 16. I am at a loss as to what Number 12 is
12 probative or relevant to which is the open ceiling. So that
13 will be marked for ID only as it is not -- has not been
14 shown to the court that it is tied to any fair market value
15 or diminish in value.
16 THE COURT REPORTER: I'm sorry, what was that number;
17 twelve?
18 THE COURT: Number 12.
19 (Defendant's Exhibit 12, photo, was previously marked for
20 identification.)
21 THE COURT: Number 10 I thought we already talked about
22 that is sort of -- it is cumulative.
23 MS. WALSH: No problem.
24 THE COURT: So that would be withdrawn and marked for
25 ID only, Number 10. And then let me see what you already

1 have in right quick.
2 MS. WALSH: Yes, Your Honor, I have ---
3 THE COURT: Yeah, just let me look at them real quick.
4 MS. WALSH: Sure.
5 (Documents presented to the court.)
6 THE COURT: I don't have a problem with Number 5 as it
7 shows an accurate condition of the back of building at the
8 time of purchase.
9 MS. WALSH: Thank you, Your Honor.
10 THE COURT: Number 5 will be marked subject to the
11 County's objection.
12 (Defendant Exhibit Number 5 was admitted into evidence.)
13 THE COURT: Okay, are we ready?
14 (Several requests for break.)
15 THE COURT: Just don't talk about -- I'm sorry, I am
16 tongue-tied today. Do not talk about your testimony with
17 anyone. We will be out as long as it takes you all to go to
18 the restroom and then we will resume his testimony.
19 MS. WALSH: Thank you, Your Honor.
20 THE COURT: You are welcome.
21 (WHEREUPON, break approximately 4:36 p.m. and resumed
22 approximately 4:47 p.m.)
23 THE COURT: Are we ready?
24 MS. WALSH: We are ready, Your Honor.
25 THE COURT: Mr. Rivers, if you could get the jury for

1 me, sir.
2 (WHERUEPON, jurors enter courtroom approximately 4:49 p.m.)
3 THE CLERK: All jurors are present, Your Honor.
4 THE COURT: Thank you, ladies and gentlemen, for your
5 patience. You may be seated. We will now resume
6 questioning the witness. You may proceed, Ms. Walsh.
7 MS. WALSH: Thank you, Your Honor.
8 THE COURT: You are welcome.
9 MS. WALSH: And for purposes of the record all these
10 are admitted into evidence?
11 THE COURT: Uh-huh.
12 MS. WALSH: Do you want me to lay a foundation?
13 THE COURT: You may proceed with the witness.
14 MS. WALSH: Thank you, Your Honor.
15 THE COURT: You are welcome. Just make sure you refer
16 to the numbers for the record.
17 MS. WALSH: Yes, Your Honor.
18 **RESUMED DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:**
19 Q. Mr. McAdory, if you can look to your left up on the
20 screen.
21 A. Yes.
22 Q. This is a photograph that is marked as Defendant
23 Exhibit Number 1. When was this photograph taken?
24 A. January 26th of 2011.
25 Q. And did you take the photograph?

1 A. Yes, I did.
2 Q. And what does this photograph depict?
3 A. It depicts the -- depicts the building right as we
4 bought it.
5 Q. Okay. And I see -- where -- is that the parking space
6 in the front of the -- of the building?
7 A. As you can see, there's two cars currently parked
8 there. And then there is still the for sale sign to the
9 left.
10 Q. Okay.
11 A. Still in the pavement.
12 Q. In your opinion as the landowner how many parking
13 spaces do you have out front of the building?
14 A. I have six.
15 Q. And how do you figure?
16 A. I can park three cars wide and three cars deep. That
17 allows us up to six vehicles up front.
18 Q. And are you aware are those parking spaces when you
19 park three cars -- three cars wide, three cars deep, as you
20 said, are they within the current right-of-way?
21 A. I'm not sure if they are -- if the third car would be
22 in the right-of-way or not. If they were -- if I had three
23 big cars such as those SUV's then I would imagine the third
24 car could be in the right-of-way. If I have three compact
25 cars, then I could be well within the right-of-way.

1 Q. Meaning not within the right-of-way?
2 A. Meaning not ---
3 Q. Outside of the right-of-way?
4 A. Not outside of my property line.
5 Q. I am going to show you what is marked Defendant's
6 Exhibit Number 4. Can you please identify this for me.
7 A. That was the -- that is the back of the property,
8 picture taken January 26, 2011, right as -- probably the day
9 after we are -- two days after we purchased the property.
10 We are all there getting ready to get started.
11 Q. And did you make any improvements to the rear of the
12 property?
13 A. Yes, I -- the fence that is along the back you can
14 see - not a great picture - but you can see there is a bunch
15 of brush and overburden and some trees.
16 Actually we removed that fence and were able to move
17 that fence back, I forget, 10 or -- 10 or 13 feet further
18 back to give us some more space. It's ---
19 Q. More space for what?
20 A. To park more vehicles.
21 Q. Okay. And what vehicles do you -- what vehicles are
22 generally parked in the back?
23 A. The vehicles that are parked in the back are myself,
24 the employee's, customer's vehicles to be worked on,
25 customer's vehicles that we may be waiting on parts for,

1 customer's vehicles that we may be waiting to get into the
2 service department.
3 Q. Okay, and before this condemnation was taking it was
4 your -- is it your opinion that the highest and best use for
5 this property was as an auto repair shop?
6 A. Yes.
7 Q. And is it your opinion that after this taking the
8 highest and best use will continue to be an auto repair
9 shop?
10 A. No, it will not.
11 Q. And why is that?
12 A. Because I have no parking out front. That is going to
13 force customers to have to try and park in the back. That
14 is going to interfere with my employee's parking. That is
15 going to interfere with our ability to get in and out of the
16 service department. It is going to interfere with just the
17 overall inlet and outlet.
18 For instance, with no parking in the front the customer
19 is going to drive in the back. We're tight and restricted
20 on parking already. There is -- that is why we have the
21 service writer takes the car from the front, drives it
22 around back, puts it in the appropriate spot.
23 We typically put all vehicles to be worked on more
24 toward the left-hand rear corner. That way we can stack
25 them in and strategize who comes in next, which one comes in

1 next.
2 Customers are just going to pull in, get out of the
3 car. The first thing they are going to be prompted to do it
4 walk through the shop to get to the front office.
5 Q. And walk through the shop, what do you mean the shop?
6 A. Meaning the service department.
7 Q. So who works in the service department?
8 A. Technicians.
9 Q. And what is in the service department; are there a lot
10 of vehicles?
11 A. Car lifts; you know, just all of our -- all of our
12 automotive equipment. There is -- there may be air hoses
13 that are dangling from the ground. There's car lifts that
14 have what we call arms that fold in and out. Definitely
15 don't want people walking through the shop.
16 Q. Why?
17 A. It is not safe.
18 Q. I am going to have to go back to Defendant's Exhibit
19 Number 1. You mentioned a driveway along the side. Looking
20 to -- where does the driveway began along the side of the
21 property in this photograph?
22 A. Just to the right of the corner of the building.
23 Q. Okay. And approximately how wide is that driveway?
24 A. The driveway is 14.2 inches wide.
25 Q. Fourteen point two inches wide?

1 A. Fourteen point two.
2 Q. Have you measured it?
3 A. Actually I have a survey done that depicts the exact
4 measurements of the drive.
5 Q. And do -- when you move vehicles -- earlier you
6 testified that you move customer vehicles from the front of
7 the property to the rear of the property?
8 A. Yes.
9 Q. Is it wide enough for two vehicles to pass
10 simultaneously side by side going opposite directions in
11 that driveway?
12 A. No.
13 Q. And why not?
14 A. Because as a -- as we've stated, vehicles are
15 approximately seven feet -- seven feet wide. Fourteen point
16 two, two vehicles are not going to pass each other safely
17 without touching.
18 Q. Okay. So if a customer comes after the taking and you
19 said that they would -- you said they would technically have
20 to park in the back; is that correct?
21 A. Yeah, they are going to have to park in the back. We
22 are not going to -- they are not allowed to walk from the --
23 you know, through the service department to get to the front
24 offices they are going to have to walk from the back of
25 building up that side driveway and then walk around the

1 front of the building.
2 That presents a problem when another customer may be
3 pulling in and/or out of that driveway and/or one of our
4 service technicians may be trying to get in or out of that
5 driveway.
6 Q. Now if a car was coming and if -- and a customer was
7 walking along the driveway where would that customer go?
8 A. They are either going to need to back up against the
9 building or either step up onto an eighteen inch or two foot
10 high elevated curb next to us.
11 Q. And that elevated curb does that align along the
12 property boundary ---
13 A. Yeah, that ---
14 Q. --- between you and your adjacent property?
15 A. --- is what I would call the property line.
16 Q. Okay.
17 A. It is a raised, concrete retention wall.
18 Q. Which leads us into Defendant's Exhibit Number 5. You
19 can look and you can see this is the rear portion of the
20 property. Can you please describe this photograph.
21 A. That is the back of the property pre-upfit.
22 Q. Pre-upfit. And so is that the back of the -- is the
23 repair portion of your shop in the rear?
24 A. Yes, it is.
25 Q. And how many bay doors do you have now?

1 A. I have two.
2 Q. Okay. So you added an additional bay door where?
3 A. To the far left. So there is one on the far right and
4 now one on the far left?
5 Q. And is that the end of the driveway to the far left?
6 A. Yes, right where you can see the gate, gate posts, the
7 large gate posts.
8 Q. And why do you have a gate post?
9 A. Because once a customer bring me his vehicle and leaves
10 it in my possession whether it stays in the shop or stays
11 overnight I am responsible for that vehicle. So I need to
12 have a secure -- secured area to store and house their
13 vehicles just to protect myself and to protect the
14 customer's vehicles.
15 Q. Do customers ever drop off and pick up their vehicles
16 on the property?
17 A. On a very regular basis we have -- and in most
18 automotive places have this on either what we call an early
19 bird or a late drop off. If you can't get there in the --
20 you know, if you can't get there in the morning before -- by
21 the time -- if you need to be there before we open in the
22 morning you can bring the vehicle in, park it and lock it.
23 For the keys fill out an envelope, throw the keys in a drop
24 slot. We come in, grab the keys. We handle it from there.
25 The same thing in the evening. Somebody wants to drop

1 a vehicle off after hours, same thing. Park it, lock it,
2 envelope, keys in the drop box. We handle it the next
3 morning.
4 Q. So after the taking of this property once construction
5 begins you lose parking on the front?
6 A. Yes.
7 Q. So where are customers suppose to drop off their cars
8 after hours?
9 A. They are going to be forced to put it in that driveway
10 on the left of that picture.
11 Q. So has to move those cars in the morning?
12 A. Yeah, when we get there in the morning we are going to
13 be faced with that is our in -- one and only access to the
14 back of the property.
15 So some vehicles fortunately that are dropped off
16 overnight are cranked up and drive. Some of them tow trucks
17 deliver and drop off; we get there in the morning and we
18 have no clue what is wrong with it. Not going to be just as
19 simple as getting in, turning the key, cranking it up and
20 moving it.
21 We have five employees at Lex-Tech Automotive. That
22 means there's five employee vehicles. And imagine five
23 people -- five vehicles trying to come into that property
24 just as employees and having maybe one or two vehicles
25 dropped off or towed and parked on the side of that

1 building. It is going to completely clog up our system.
2 Q. So ---
3 A. It is going to stop workflow.
4 Q. I'm sorry, sir. So if you had two customers who
5 dropped off at the building and they were stacked in that
6 driveway where would the employees park?
7 A. They would have to try and park in the alley or either
8 remain out in the median until somebody could get over,
9 unlock the doors, find the keys, get the vehicles moved to
10 clear the drive.
11 Q. Or possibly park across the street?
12 A. If for -- if -- yes, that's a possibility.
13 Q. And that means they would have to walk across Folly
14 Road?
15 A. Yes, if they are likely to park across the street.
16 Q. And would that -- would you consider that safe for
17 your -- for employees?
18 A. Absolutely not.
19 Q. Or customers?
20 A. No.
21 Q. I'm going to show you what is marked as Defendant's
22 Exhibit 13. Can you please identify this for me.
23 A. That is our back parking area. After the -- as you can
24 see, the crushed concrete was installed. Not sure -- don't
25 think the fence had been moved by -- at that time.

1 But that is kind of the gist of how we lay our vehicles
2 out, typically six to seven cars wide, two to three cars
3 deep. Those are cars -- those are either employee's cars,
4 cars that have been -- or to be serviced or they are waiting
5 on parts.
6 Q. You said sometimes tow trucks come to drop off vehicles
7 to your -- to the property?
8 A. Yes.
9 Q. And that is tow trucks for the auto repair shop?
10 A. Yes.
11 Q. And do tow trucks ever drop off -- drive from the front
12 of the property to the rear of the property by the driveway,
13 through the driveway?
14 A. Yes, that is how -- that is the one and only way. They
15 pull in, turn around, back up, drop a vehicle in the back
16 lot.
17 Q. And tow trucks are pretty large, aren't they?
18 A. I think the average tow truck is about eight -- at
19 least eight, eight and a half feet.
20 Q. Feet wide or ...?
21 A. Wide.
22 Q. Wide. And approximately how long?
23 A. I think the average flatbed is probably 30 -- in excess
24 of 30 feet.
25 Q. So a tow truck has to come to the back, drop off a

1 service vehicle and then turn around to make an exit?
2 A. Yes.
3 Q. Okay. And it is supposed to turn around at the rear of
4 the property?
5 A. Yes.
6 Q. And that is where you have service vehicles, employees
7 park, and after the taking under the County's theory
8 customers would -- where customers are parking?
9 A. Yes.
10 Q. I am going to show you what is marked as Defendant's
11 Exhibit 14. Can you please identify this.
12 A. That is a picture taken of our interior office for
13 the -- for our service advisor.
14 Q. And is this part of the upfitting you did on the
15 property?
16 A. Yes.
17 Q. Okay. And so what about that front window?
18 A. My sign.
19 Q. Okay. And what -- what else; is that parking out in
20 front of the window?
21 A. Yeah, that is -- obviously there are no vehicles out
22 front currently at that time.
23 Q. So when customers come to your lot where are they
24 supposed to park in and out of the building?
25 A. Right on the parking spaces provided right outside that

1 window.
2 Q. And is that a reception room?
3 A. Two on the -- flip -- very -- other side of the -- of
4 that room is our waiting lounge, yes.
5 Q. Okay. And what is this (pointing)?
6 A. That is the service advisor's area.
7 Q. Okay. And I am going to show you what is marked as
8 Defendant's Exhibit 15. Is this the waiting lounge you were
9 referring to?
10 A. That is the lounge.
11 Q. So when customers come in they are supposed to stay
12 there?
13 A. That is where they hang out until we are done, we are
14 completed.
15 Q. And they don't go through the repair shop?
16 A. No, ma'am.
17 Q. Okay. And they don't have to walk down the driveway?
18 A. No, ma'am.
19 Q. I am going to show you what is marked as Defendant's
20 Exhibit 16. Can you please identify this for us.
21 A. That is the interior of our shop. As you can see,
22 there's three automotive lifts and work benches, some you
23 know, normal automotive equipment. You can see the -- I
24 mean just the inside of the shop. And it is pretty much in
25 its finished state.

1 Q. And how many lifts approximately are in this picture?
2 A. There is one to the left and two to the right.
3 Q. And so if customers are parking in the rear after the
4 taking of the property, because as you testified as to the
5 best use of the property in your opinion it is not a repair
6 shop, customers would have to walk through a driveway or the
7 repair shop?
8 A. Correct.
9 Q. And that is the repair shop that customers would walk
10 through?
11 A. Yes.
12 Q. Which you consider not safe for your customers?
13 A. Absolutely not.
14 Q. I'm going to show you what is marked as Defendant's
15 Exhibit 17. Can you please identify this for the jury.
16 A. That is our front parking area. You can see there is
17 currently roughly five -- or there were five cars parked out
18 front. You can see our sign.
19 Q. As the landowner do you consider the sign important for
20 property?
21 A. Extremely.
22 Q. And it is commercial property, correct?
23 A. Yes, it is.
24 Q. And do you lease that property?
25 A. Yes.

1 Q. And as a landlord and landowner in your experience in
2 working with commercial property is signage important to
3 tenants?
4 A. Extremely. It lets them know who they are and what
5 they do.
6 Q. And is that sign visible if you are traveling from
7 downtown to Folly Road and if you are traveling -- I mean to
8 Folly Beach -- and if you are traveling from Folly Beach to
9 downtown is it visible from both directions?
10 A. Yes, that is.
11 Q. Okay. Mr. McAdory, do you have any regrets for
12 purchasing this property?
13 A. Yes, I do.
14 Q. And what is that?
15 A. Due to the property taking.
16 Q. And how is the property taking affecting you?
17 A. The property taking has forced me to go out and buy
18 another piece of property to relocate to.
19 Q. Okay. With respect to this taking, how close is the
20 right-of-way coming to the front door of the property?
21 A. Six feet.
22 Q. Okay. And it is approximately the right-of-way is 17
23 feet in depth?
24 A. Yes.
25 Q. And it leaves six feet -- six feet from the

1 right-of-way to the door?
2 A. To the front door, correct.
3 Q. And that it is 60 feet wide; is that correct?
4 A. It is.
5 Q. And do you know how many square feet that is?
6 A. Twelve hundred and I believe eighty-seven.
7 Q. And you were here during the opening testimony when
8 everybody's making reference to the fact that the County is
9 only taking 0.030 otherwise known as 1,287 square feet,
10 correct?
11 A. Yes.
12 Q. And I guess it appears according to the County it
13 doesn't seem like a lot of property. Does it -- is that a
14 lot of property to you?
15 MR. MITCHELL: Objection, Your Honor.
16 THE COURT: Basis.
17 MR. MITCHELL: She is leading -- asking leading
18 questions.
19 THE COURT: Sustained. Leading.
20 MS. WALSH: Thank you, Your Honor.
21 THE COURT: You are welcome.
22 BY MS. WALSH:
23 Q. How much -- how -- what is the square footage of the
24 taking of the property?
25 A. I believe it is 1,287 square feet.

1 Q. Is that a lot of property to you, Mr. McAdory?
2 A. Yes. And if you put it in the form of my home it's
3 approximately 1,500 square feet. That is roughly 1,300
4 square feet. That is roughly the footprint of my home.
5 Q. And what effect is this having on the property from
6 your perspective as a landowner wanting to lease commercial
7 property?
8 A. I'm sorry. Phrase again. I'm sorry, say again.
9 Q. Yes, I'm sorry. What effect is the taking having on
10 your property for purposes of changing the highest and best
11 use from an auto repair shop?
12 A. It has forced me to have to relocate the business.
13 Q. And is it affecting the parking?
14 A. Yes. Currently it does not. But when -- as soon as
15 the construction equipment shows up and the silk fences and
16 the big orange barrels show up six feet from my front door
17 then I cease to operate.
18 MR. MITCHELL: Your Honor, objection to this line of
19 questioning. May I approach?
20 THE COURT: Uh-huh.
21 (WHEREUPON, bench conference 5:07 p.m.)
22 THE COURT: Madam Forelady, ladies and gentlemen, we
23 appreciate your indulgence. And I know we have gone beyond
24 five o'clock. And please don't get concerned. I am not
25 going to hold you hostage here. We are going to be breaking

1 shortly.
2 I need to take up a very brief matter of law. During
3 the break please do not discuss the case and please leave
4 your notepads as well as exhibit in your seats. But you
5 don't have to go all the way down to the jury room, because
6 this is only going to take a second.
7 (WHEREUPON, jury exits courtroom 5:30 p.m.)
8 THE COURT: What is the basis of the objection? You
9 all can take your seats.
10 What is the basis of the objection?
11 MR. MITCHELL: Let me -- let me ---
12 THE COURT: Oh, I'm sorry. I didn't realize you
13 didn't -- you heard me but you are gathering your stuff.
14 MR. MITCHELL: Yes, Your Honor.
15 THE COURT: That is fine.
16 MR. MITCHELL: The basis of the objection, he is now
17 going to -- he is talking about he is going to have to move.
18 And he is talking ---
19 THE COURT: Well, he has testified he already bought
20 another building, didn't he?
21 MR. MITCHELL: Yes --- I believe he can testify that he
22 has purchased another building. But when he -- the business
23 is now moving. The loss of business is not a defensible
24 element of damages.
25 THE COURT: Well, I don't think he said he lost

1 business. He said I was forced to purchase another piece of
2 property to conduct business which is along the lines of why
3 he now says his property is not suitable for the purpose for
4 which he purchased it.
5 So I guess I am -- that is why I was trying to get some
6 clarify on exactly what it is you are objecting to. He
7 hasn't testified that I lost business and this is the amount
8 of business I have lost. He simply testified that I bought
9 this building for a particular business, I anticipated using
10 it in a particular way, in my estimation I can no longer use
11 it for that purpose so I bought another piece of property to
12 conduct that business.
13 So I guess I am trying to figure out what is it you are
14 objecting to.
15 MR. MITCHELL: Well, going back to that blending of him
16 being Lex-Tech or the landowner. The way I interpret what
17 he said - and that is neither here nor there - but it
18 sounded like he was implying that his business, Lex-Tech
19 Automotive, was being forced out of business due to this
20 taking and now having to move. I don't know ---
21 THE COURT: I didn't interpret it that way. What I
22 heard him say was he was forced to purchase another piece of
23 property to conduct business.
24 I think to go any further beyond that would not be
25 appropriate, relevant, or germane. You know, you can

1 testify to a lot of things. You almost box yourself in.
2 Because the only thing I am going to instruct the jury is on
3 diminution of value, fair market value then and after.
4 MS. WALSH: We are not going ---
5 THE COURT: And you almost get into a little tight spot
6 because you hadn't shown that he could not conduct business
7 there. You don't have somebody that can testify
8 independently regarding these issues. Not that you have to.
9 But I mean I, you know, I really haven't heard anything at
10 this point that he was precluded from conducting his
11 business. I
12 The construction hadn't even started yet. So we don't
13 even really know effectively how it is going to affect him.
14 They haven't even done the taking yet. We don't really --
15 you know, logistically we don't know. So I don't know.
16 I think that he can testify that he has purchased
17 another building. But to go any further beyond that would
18 be problematic.
19 All right. Are we ready to go forward?
20 MR. MITCHELL: Yes, Your Honor. Thank you.
21 THE COURT: Did you have any further questions of the
22 witness, Ms. Walsh, or ---
23 MS. WALSH: Yes, Your Honor, I do.
24 THE COURT: --- was that the conclusion of your --
25 pardon me?

1 MS. WALSH: Yes, Your Honor, I do.
2 THE COURT: How many more questions do you have?
3 MS. WALSH: I will try to ---
4 THE COURT: I just need you to give me an estimate of
5 how many minutes.
6 MS. WALSH: Maybe 30 -- maybe 20. Maybe.
7 THE COURT: We will see. All right. I am going to
8 break shortly.
9 (WHEREUPON, jurors enters courtroom 5:13 p.m.)
10 THE COURT: You may be seated. Ladies and gentlemen,
11 we appreciate your patience. We will now resume with
12 questioning of the witness. You may proceed.
13 MS. WALSH: Thank you, Your Honor.
14 THE COURT: You are welcome.
15 RESUME DIRECT EXAMINATION BY MS. WALSH OF MR. MCADORY:
16 Q. Mr. McAdory, as the landlord you testified that you
17 weren't going to have any parking spaces out front; is that
18 correct?
19 A. Yes.
20 Q. Okay. Just to pick up from there. Did you ever
21 discuss this parking issue with the County?
22 A. I discussed with the right-of-way agent.
23 Q. Did you ever discuss parking issue and your concerns
24 with the County's appraiser?
25 A. I never spoke with the County's appraiser.

1 Q. And to your recollection did the County's appraiser
2 ever attempt to contact you?
3 A. No, I was never contacted by the County appraiser.
4 Q. And did the County ever offer you any solution for the
5 loss of parking?
6 A. Yes, they offered to take the affected area out front
7 that was going to be taking and to put it right behind the
8 gate in the back of the property.
9 Q. And that was the gate in the back of the property in
10 reference to the pictures we looked at earlier?
11 A. Right. Right. And they had -- then they said
12 basically take that square footage, add it to the back of
13 the property, remove -- remove the fence and then fence
14 around that and that would be my new parking.
15 Q. Okay. I am going to put just for the purposes so the
16 jury can understand and all else present in the courtroom I
17 am going to put Defendant's Exhibit Number 13.
18 Okay, you see the gate is on the left-hand side; is
19 that correct?
20 A. Correct.
21 Q. Okay. And to the right of the gate is that the end of
22 the driveway?
23 A. Yes.
24 Q. Okay. And where exactly would the parking go for
25 customers?

1 A. It would -- what they had stated was to take the 1,277
2 square foot that was taken from the front and to put it
3 starting at a little before where that is. Not the end of
4 the gate but at the gate post back.
5 Q. In other words at the very dead-end portion of the
6 driveway?
7 A. Yeah, they wanted me to put it on the right side back
8 and then obviously fence around that. That way I could I
9 guess still have my secured parking area.
10 Q. And would tow trucks be able to maneuver to that rear?
11 A. No, ma'am. Absolutely not.
12 Q. And why not?
13 A. Because you have got 60 foot of depth. I mean I have
14 only got maybe on the back of the property maybe to the back
15 of the property from the -- from the gate -- and I am purely
16 guessing. I have a survey I can look and find out. But I
17 am going to guess it is may be 60 or 80 feet total.
18 Q. And would this affect the flow of cars on the property?
19 A. Absolutely.
20 Q. And how is that?
21 A. Obviously if that is where everybody parks I can't
22 utilize the vehicle parking to the left. I can't get to it.
23 Q. Let's go back to Defendant's Exhibit Number 17. It
24 always helps to look at it when you talk. Is that your
25 sign?

1 A. Yes, it is.
2 Q. Okay. And that sign as we have heard on testimony is
3 currently in the right-of-way, correct?
4 A. Yes, it is.
5 Q. And so does that sign need to be removed as a result of
6 the taking?
7 A. Yes, that sign is currently in the right-of-way.
8 Q. And did you -- are you concerned regarding the loss of
9 your sign?
10 A. Absolutely.
11 Q. And why?
12 A. Because if I lose the sign I lose the visibility. I
13 lose the exposure. Again, the sign is there for high
14 vehicle traffic area. I am going to lose the ability to
15 tell people who I am and what I do.
16 Q. And as the landlord -- I mean it is a commercial piece
17 of property, and you obviously as a -- you are a landowner
18 and you lease it ---
19 A. Correct.
20 Q. --- to a tenant, correct?
21 A. Correct.
22 Q. And in your experience with commercial real estate
23 signage is important to tenants?
24 A. Exactly. Again, as I stated, a tenant needs to be able
25 to show who they are and what they did with the sign.

1 Q. Once that sign is removed where -- where are you --
2 where is it going to be moved to?
3 A. Currently there is no solution for that problem.
4 Q. Did you discuss your concerns regarding the sign with
5 the County?
6 A. They came up with an estimate of $4,500 to cure the
7 sign but had no I guess recommendation or to tell me where I
8 was going to have to put it.
9 Q. Can you put that sign onto the far what would be from
10 where you are sitting left of the building?
11 A. No, because as you can see there are some trees there.
12 And palm trees. Another tree. I mean who is going to see
13 it?
14 Q. Okay. Can you put that sign to the far right of the
15 building?
16 A. I can. But again, there is a Black Bean Cafe next to
17 that. It is going to obstruct the view.
18 Q. And it would be where -- would it be in the driveway?
19 A. It would be on the driveway.
20 Q. And can you put the sign on top of the building?
21 A. No, I cannot.
22 Q. And why not?
23 A. Because there is an SCE&G power line transmission that
24 goes over the -- that's going to go over the top of the
25 building that restricts me to go -- I think I can't be any

1 more than 17 or 18 feet from that power line, power
2 distribution line.
3 Q. After the taking and -- in the after, post taking of
4 the property and once construction begins is there any
5 configuration of signage that you as the landowner thinks
6 will give as much visibility?
7 A. No.
8 Q. And why is that?
9 A. Because where am I going to put it? I am going to have
10 to be -- I am going to have to take it out of its current
11 location.
12 The only alternative is to take that post, move it, put
13 in well within the right-of-way, well within whatever code
14 says a sign needs to be off the right-of-way, and then
15 again, presented with the trees how are you going to see it?
16 Between the trees and the roof you are not going to see it.
17 Q. Okay. Mr. McAdory, you are losing approximately an
18 additional 17 feet in depth off the front of the property,
19 correct?
20 A. Yes, I am.
21 Q. And are you aware of the current setbacks of the
22 property?
23 A. Yes.
24 Q. And what are they?
25 A. Fifteen foot from the front, twenty-five foot from the

1 rear.
2 Q. And that is 15 foot what; what -- can you do anything
3 in the 15 feet?
4 A. No, it has to be a I think they call it a landscaped
5 vegetated buffer.
6 Q. Before the taking by the County did your property
7 comply with the current minimum setbacks?
8 A. Yes, it is currently 20-plus feet away from the
9 property line.
10 Q. Okay. And after the taking and once construction
11 begins by the County will your property comply with the
12 minimum setbacks?
13 A. No, it will be what I guess they would call a
14 nonconforming. It is only going to six feet from the
15 property line.
16 Q. And after the taking and once construction begins do
17 you know when and at what point the setbacks will kick in?
18 A. If the building is ever removed or if the building goes
19 vacant for more than one year.
20 Q. What happens if the building is ever removed?
21 A. It will have to -- it will have to be moved back and
22 fall within the new setbacks.
23 Q. Of 15 feet from the right-of-way?
24 A. Of 15 feet from the right-of-way.
25 Q. Okay. And if ---

1 A. That is if however if the building is configured that
2 is 15 feet vegetated buffer. If anybody wants to have
3 parking in the front then obviously the building goes
4 further back than that.
5 Q. Okay. And you said if you are not able to lease the
6 property in a year the setbacks kick in?
7 A. Yes. If I do not lease the property within one year
8 all of the setbacks kick in.
9 Q. And what happens to you as the landowner if the
10 building is destroyed if you don't lease the property within
11 one year?
12 A. I would lose -- I would lose a tenant. I would lose
13 the ability to generate income. I would lose money. It
14 leaves me with in an uncertain future.
15 Q. And as a landowner you have a mortgage, correct?
16 A. Yes, I do.
17 Q. And if you aren't generating income can you pay your
18 mortgage?
19 A. No.
20 Q. Can you pay your taxes?
21 A. No.
22 Q. And can you pay your insurance?
23 A. No.
24 Q. Okay. As the landowner did you attempt to correct the
25 problems caused by the taking in anticipation of the

1 construction to begin?
2 A. Yes, we consulted with a commercial building contractor
3 that specializes in metal building ---
4 MR. FERRARA: Objection, Your Honor.
5 THE COURT: Basis?
6 MR. FERRARA: Hearsay.
7 THE COURT: Please approach.
8 (WHEREUPON, bench conference 5:21 p.m.)
9 THE COURT: Sustained. Hearsay. Rephrase.
10 MS. WALSH: Okay.
11 BY MS. WALSH:
12 Q. Mr. McAdory, as the landowner did you have any opinion
13 on how you could correct the problems that you have raised
14 regarding the parking, the loss of signage, and the loss of
15 depth?
16 A. Yes, as our first thought -- I don't know how -- the
17 way you can depict from this picture. That is kind of I
18 guess a two-stage building. There is a lower -- a lower
19 roof. And then as you can see, there is another upper roof.
20 The lower roof is the office area, slash, waiting lounge,
21 slash, parts area.
22 The upper raised roof area is just a 20 -- or 40 by 40
23 square shop. Our first thought was we are going to lose all
24 of our parking in the front and then we are going to lose
25 our sign.

1 So my first thought was to remove the office off the
2 front, move it to the back of the building. That gives me
3 my parking back. That gives me enough space to basically
4 put that pedestal sign not where it is at but in the same
5 location just further back and it fit the right-of-way. And
6 it gave me my parking.
7 Q. So you were going to move the office to the rear?
8 A. Yeah, we were basically just going to take the office
9 off the front and put it on the rear. I guess they would
10 call it leapfrog the building. Leave the shop where it is
11 at; office off the front, put it to the back.
12 Q. So then how would you access the repair shop?
13 A. Well, that was a problem. When I fixed the parking
14 problem it now created an access problem to the back of the
15 shop.
16 Q. Please elaborate.
17 A. Well, as one of the pictures that you showed showed the
18 back of the building with only one door. It now has two
19 doors. That is how we access the building.
20 So if I take the office off the front and put it on the
21 back, that obviously conflicts with our vehicle flow. We
22 can't get the vehicles in and out if we put an office on the
23 back.
24 The only way to solve that would be to put -- to kind
25 of flip the shop and put the garage -- garage doors on the

1 front. We have got to get in and out of the shop.
2 So then again, there goes my front parking that I just
3 created. So in the end it just -- it wasn't a viable
4 option.
5 Q. Mr. McAdory, as the landowner you testified that your
6 tenant was going to move out; is that -- is that a fair ---
7 A. That is correct.
8 Q. --- characterization? What are your plans for the
9 property after the tenant moves out?
10 A. I have no plans. I don't know what I am going to be
11 able to do with it. My hopes is is that I can sell it. I
12 just -- I want to get -- I need -- I just want to get out of
13 it. I need to sell it.
14 Q. When is the tenant moving out of the property?
15 A. Planned forecasted for the beginning of January.
16 Q. Is that a definite move out date?
17 A. It is close. But we -- there's contractors doing work
18 over there. So it is going to be iffy. But we are shooting
19 for the 1st of January. But it's not definite. But it
20 should be around January.
21 Q. So just -- just to understand -- and we are almost
22 done. It is your opinion that the highest and best use
23 before the taking of your property by the County was an auto
24 repair shop?
25 A. Yes.

1 Q. Okay. And it is your opinion if I understand your
2 testimony correctly that the highest and best use after the
3 taking by the County is not going to be for an auto repair
4 shop?
5 A. No, if I can't use it -- you know, if -- if it can't be
6 used for an automotive business by Lex-Tech Automotive, I
7 can't rent it to another shop or someone else to run as a
8 garage. I can't sell it to someone else to run it as a
9 garage. If it doesn't work for Lex-Tech Automotive it is
10 not going to work for someone else.
11 Q. Okay. Mr. McAdory, what do you think in your opinion
12 as the landowner your property was worth before the taking?
13 A. Three hundred and seventy-five thousand dollars.
14 Q. And where do you get that number?
15 A. That was the amount that I purchased it for. When I
16 purchased the property and obtained a mortgage the bank
17 hired an appraiser. The bank appraisal came back at
18 375,000. That's what I paid. I believe fair market value
19 is $375,000.
20 Q. And what do you think the property is worth after the
21 taking?
22 A. After the taking I believe the property is just as the
23 County states, $225,000.
24 Q. And how much do you as the landowner believe the County
25 should pay you as just compensation?

1 A. The difference of 375 minus 225 which is 150,000.
2 Q. And would just compensation in the amount of $150,000
3 make you whole in your opinion as the landowner?
4 A. Yes, it would.
5 Q. And does this value of just compensation reflect your
6 opinion as to the date of condemnation of July 11th, 2012?
7 A. Yes, it does.
8 Q. And do you believe that the improvements and
9 outfittings to the building benefited you as the landowner?
10 A. Yes.
11 Q. And do you think the improvements and outfits that you
12 did -- that were performed on the building add value to your
13 property?
14 A. Yes.
15 MS. WALSH: May I have a moment, Your Honor?
16 THE COURT: Uh-huh.
17 MS. WALSH: Your Honor, thank you for the court's
18 patience. We have no further questions.
19 THE COURT: Madam Forelady, ladies and gentlemen, we
20 are going to take advantage of this break in testimony to
21 take our evening recess. During the break please do not
22 discuss the case in any manner whatsoever.
23 Please do not do any independent research of any type.
24 That includes anything that could be found on the internet.
25 As the fact finders you are bound to decide this case

1 according to the sworn testimony that you have heard and the
2 other exhibits that have been or may be introduced during
3 the course of this trial.
4 We are going to resume in the morning at 9:30. And we
5 will -- you will come directly to your jury room just as you
6 did after lunch today. And I am sure the bailiffs have
7 already shown you how to do that.
8 Again, please don't have any contact with anyone in or
9 about the courthouse. Even an innocent conversation could
10 be very easily misinterpreted. Because people look very
11 different in the courtroom than they look outside the
12 courtroom.
13 I don't know if you have noticed these little
14 bubbles that are everywhere. Those are cameras, very
15 high-definition cameras that record everything we do,
16 almost -- this building I think is, what, 177,000 square
17 feet. Almost all of it is recorded included the elevators.
18 I would hate to tell you how many videos I have had to
19 watch to try to interpret what people are saying to one
20 another.
21 There is a heightened level - I would like to say it in
22 a more delicate way - a paranoia when people are trying
23 cases and when advocacy is involved. And so the best route
24 is to only talk to people who have juror stickers on.
25 Especially with the advent of Smartphones you never know who

1 is recording you.
2 And so I again I would hate for a very innocent
3 conversation to be misinterpreted because of that heightened
4 scrutiny that happens during the litigation process.
5 I don't think there are any media accounts about this
6 case. So I don't think you have to guard yourselves in any
7 particularly way regarding the newspaper, radio or Internet
8 or the local news.
9 You all have been incredibly patient with us. Today is
10 our Monday. Mondays are typically a little rocky. Some
11 Mondays go better than others.
12 But you all have been very generous with your time with
13 us, and we appreciate your patience. Please know that we do
14 not take your time for granted. We could not have jury
15 trials without you all really being willing to donate your
16 time to us.
17 Again, we will resume in the morning at 9:30. Have a
18 great evening. If you would leave your notepads in your
19 seats we will collect them and secure those during the
20 evening recess. You can leave those as well. We will take
21 care of them.
22 Thank you so very much. Have a good evening.
23 (WHEREUPON, jurors exits courtroom.)
24 THE COURT: You may be seated. Is there anything
25 before we adjourn for the evening, from the landowner?

1 MR. MURPHY: Nothing, Your Honor.
2 THE COURT: From the County?
3 MR. FERRARA: Nothing, Your Honor.
4 THE COURT: Okay. We will resume in the morning at
5 9:30.
6 Sir, during this break please do not discuss
7 your testimony with anyone. We will resume your
8 cross-examination in the morning at 9:30.
9 Have a good evening. You all can leave your things in
10 the courtroom if you would like.
11 MR. FERRARA: Thank you.
12 THE COURT: It is secure. Nobody is going to touch
13 anything. And we clean during the day. So there is no
14 cleaning crew that comes in in the evening. So don't tote
15 anything unless you just want to.
16 (WHEREUON, recess October 16, 2013, 5:27 p.m.)
17 (October 17, 2013)
18 THE COURT: All right. Is the landowner ready to
19 proceed?
20 MR. MURPHY: We are, Your Honor.
21 THE COURT: Is the County ready to proceed?
22 MR. MITCHELL: Yes, Your Honor.
23 MR. FERRARA: Yes.
24 THE COURT: Please bring in the jury, Mr. Rivers.
25 Mr. McAdory, if you will retake the stand I will remind

1 you you are still under oath.
2 (WHEREUPON, the jury enters the courtroom at approximately
3 9:41 a.m.)
4 THE COURT: Ladies and gentlemen, I hope that you all
5 had a pleasant and restful evening. We are now going to
6 resume the cross-examination of the witness.
7 Mr. -- or Mr. Mitchell, you may proceed.
8 MR. MITCHELL: Thank you, Your Honor. May it please
9 the court.
10 THE COURT: Yes, sir, you may proceed.
11 **CROSS-EXAMINATION BY MR. MITCHELL OF MR. MCADORY:**
12 Q. Good morning, Mr. McAdory.
13 A. Good morning. I know we briefly spoke. And let me
14 reintroduce myself quickly. My name is Brad Mitchell. I am
15 an assistant county attorney in Charleston County.
16 Now yesterday you gave some testimony. One of the
17 things you testified to was that the pictures that were
18 shown up here by Ms. Walsh that you actually took those
19 photographs. But in a deposition less than a month ago you
20 said your wife took those photographs. Which person took
21 those photographs?
22 A. My wife took them beside me. She is the photog in the
23 family, not me. She knows how to operate the camera better
24 than I do.
25 Q. But your testimony was that you took the pictures,

1 correct?
2 A. Yes, I guess I said yes.
3 Q. Additionally yesterday during your testimony you
4 testified that yourself personally and Lex-Tech Automotive
5 were signers to the mortgage; is that correct?
6 A. Yes, we are both Lex-Tech Automotive and Glen McAdory
7 are also on note with BB&T for 873 Folly Road.
8 Q. Have you seen the mortgage?
9 A. No, I probably -- I am sure I had a HUD statement or a
10 closing -- I know I have a closing statement. I can't say
11 that I have seen the mortgage. That is something I guess
12 the closing attorney would file with the county, and I would
13 have no reason to see that.
14 Q. Quickly let's take a look at the mortgage here. And
15 can you read -- turn around. Can you read who is on that
16 mortgage? There is the button.
17 A. It says Lex-Tech Automotive.
18 Q. And can you point out where it sayings Walter G.
19 McAdory?
20 A. I don't see it on any of those lines.
21 Q. And just real quick because I don't want to belabor
22 this point to much. Is this your signature on the back?
23 A. Yes, to the far right; yes, it is.
24 Q. And below your signature does it say president?
25 A. Yes, it does.

1 Q. So you signed that as the president of Lex-Tech, not as
2 Walter G. McAdory?
3 A. Okay. Yes, sir.
4 Q. In fact, you are not on the mortgage, Lex-Tech is; is
5 that correct?
6 A. No, as I understand it I am responsible as Glen McAdory
7 and Lex-Tech Automotive is also responsible.
8 Q. Okay. Thank you. Let's talk about Exhibit 17. This
9 is where you are claiming that you have six parking spaces;
10 is that correct?
11 A. Yes, sir.
12 Q. Now can you point out the six parking spaces. Because
13 when I customarily pull into a business I don't put my car
14 in the back of a lot to have somebody pull in front of me
15 and I can't leave.
16 A. Right, those are vehicle that we actually will park
17 there towards the end of the afternoon. People come in.
18 Typically the front of the lot is the empty. That is where
19 customers come. We make the repairs.
20 When we are done with the vehicles we park what we call
21 ready vehicles in the front of the building so that
22 customers can come in the office, do their business in the
23 office, walk out the front door, drive in their vehicle,
24 have -- drive right out.
25 Q. But still not ---

1 A. The customers are not in the back of property.
2 Q. It is still not six parking spaces; you just have five
3 cars parked there; is that correct?
4 A. Well, obviously if you backed another car there that
5 would be an available six.
6 Q. Okay, let's move on to your damages. Yesterday you
7 testified that the -- you believe the property in the before
8 was worth $375,000; is that correct?
9 A. Correct. Yes, sir, it is.
10 Q. Now of that $375,000 how far is that apportioned out;
11 do you remember?
12 A. I do not know though.
13 Q. Well, according to the appraisal by the financing
14 institution that you mentioned yesterday ---
15 A. Yes, sir.
16 Q. --- it does give a value to the land - and I am going
17 call that the dirt.
18 A. Okay.
19 Q. It simplifies. And it gives a value to the building.
20 It gives a value to the land of $280,000 and a value to the
21 building of $95,000; isn't that correct?
22 A. I don't have the appraisal if front of me. But I am
23 sure it has it. I don't know how to parse it out one for
24 one. To me it is the entire piece of property $375,000.
25 Q. So what are your damages then?

1 A. The damages are I paid 375, it is now worth according
2 to the County $275,000. I cannot operate my -- I cannot
3 operate -- Lex-Tech Automotive cannot operate in that
4 building. That building now is not usable.
5 Q. Now, $225,000. I think you might have said 275, but I
6 believe it was $225,000.
7 A. You are correct.
8 Q. Do you know how Mr. Carter did that appraisal that you
9 are relying on, how you come about to that number?
10 A. No, sir, I do not.
11 Q. It's he just appraised it as the dirt value, correct?
12 A. I do not know that.
13 Q. He does not apportion a building value because he just
14 looked at the land, correct?
15 A. I am not an appraiser. I don't know how that was come
16 to.
17 MR. MITCHELL: Your Honor, I am going to need to use
18 the board. Do you mind if I approach?
19 THE COURT: That's fine.
20 BY MR. MITCHELL:
21 Q. If you can turn around, Mr. McAdory. Let's go over
22 some quick math. I will try not to bore everyone. If it is
23 gets too complicated I myself might get lost. So let's keep
24 it basic like you did yesterday.
25 You have $375,000 in the before, correct?

1 A. Yes.
2 Q. And you just subtracted out the $225,000 in the after,
3 correct?
4 A. Correct. Yes, sir.
5 Q. And that gets you to the $150,000 that you believe is
6 owed to you as just compensation?
7 A. Yes, sir.
8 Q. Now what we just talked about is how that 375 was
9 apportioned out?
10 A. Yes, sir.
11 Q. Correct?
12 A. Yes, sir.
13 Q. Your appraiser -- or the bank's appraiser came out with
14 a land value of 280,000. More importantly he comes out with
15 a building value of 95,000.
16 Now let's break down this 150,000. Which portion goes
17 to the dirt value and which portion goes to the building
18 value?
19 A. After the taking the building has no value.
20 Q. The building has no value?
21 A. The building has no value.
22 Q. So do you know how much dirt we took, Mr. McAdory?
23 A. Twelve hundred and seventy-seven square feet.
24 Q. Twelve hundred and eighty- ---
25 A. I'm sorry.

1 Q. --- seven, right?
2 A. Twelve hundred and eighty-seven square feet.
3 Q. Feet square. Does it surprise you that Mr. Crider
4 actually assigned a square footage value to come up with his
5 value of $25 a square foot?
6 A. I am not sure how the appraisal -- I don't have the
7 appraisal -- it has been years since I have looked at an
8 appraisal. I don't know how it is broken down.
9 Q. Additionally the appraisal for the bank said the dirt
10 itself is worth $25 a square foot.
11 A. Okay.
12 Q. Okay. That's how that gets to this 225. So what you
13 are telling me is that this is just the value of the dirt of
14 this 1,287 square feet?
15 A. What I am telling you is that after the taking the
16 building has no value. The building is now after the taking
17 and after the tenant leaves the building is now a liability;
18 it is not an asset.
19 I cannot use the building. I can't rent it. It is
20 going to be difficult to sell. I am going to still have to
21 pay taxes on it. I am still going to have to pay insurance
22 on it. I am still going to have to make the premium. But
23 yet I am not going to be able to have a tenant.
24 Q. Yes, sir, I understand that. So you are saying the
25 building value is now zero?

1 A. Correct, after the taking and after the tenant leaves.
2 The taking has already happened. The tenant leaves in
3 roughly January.
4 Q. So this $150,000 represents how much of the value --
5 represent the value of the dirt that we took, that 1,287
6 square feet; is that correct?
7 A. Yes, but I am not assigning that 150 value to the value
8 of the dirt. I am assigning that value to the after the
9 taking worth of the property. The building is no longer
10 worth anything. It can't house a garage. It was built and
11 outfitted to be a garage. It can no longer be used as a
12 garage any longer.
13 Q. Absolutely. I understand. Zero dollar value, that is
14 what you are assigning it has ---
15 A. It has zero dollar value. It is a liability now. It
16 is not an asset.
17 Q. So this $150,000 represents the value of the taking of
18 this dirt; if we do the math, that is above $25 a square
19 foot; so what you are actually testifying to is that after
20 the taking the dirt value, the square foot value of the
21 dirt, actually increases almost exponentially; correct?
22 A. You are twisting it around.
23 Q. Then straighten me out.
24 A. You are twisting it around. I'm -- what I am saying is
25 after the taking and after the tenant leaves, the building

1 has no value. I paid -- I didn't buy the property in an
2 overinflated market and fall on hard times and have to sell
3 the property at a reduced rate. If that were the case then
4 I would expect as anyone would to take a loss.
5 The County has come in. They have taken my property.
6 And now what am I going to do -- I didn't ask for -- I
7 didn't cause this problem. The County came in and took my
8 property. So now I've bought a property that I was going to
9 hang on to for 15 years, run an automotive repair business
10 out of, and now I can't do that.
11 I am forced to leave. I can't have a tenant. I made a
12 substantial investment above the 375 to get the place
13 outfitted to house the garage that was going to be there for
14 15 years. Now I can't have the garage there because of the
15 taking. So now I am stuck with a piece of dirt that has no
16 value. Or the building has no value. The dirt.
17 I think in my professional -- or not professional
18 opinion. In my opinion as the landowner, that after the
19 taking -- the taking has already happened. The tenant
20 leave. The construction equipment shows up. I can't sell
21 it. I can't rent it. The business has no value.
22 I think and believe as the landowner that the dirt
23 would be easier to sell for 225,000 with the building
24 removed because the building is a liability.
25 I have still got to do the maintenance and upkeep

1 whether it is rented or not, whether it has a tenant or not.
2 I have still got to pay the taxes. I have still got to pay
3 the insurance on it. The bank is going to make me pay
4 insurance whether it has a tenant or not. If it's -- if
5 there is no building there, I don't have to pay insurance.
6 The bank can't make me pay insurance on dirt.
7 Q. So you are saying that $150,000 that represents that
8 taking of 1,287 square feet now increases the value of the
9 dirt ---
10 A. What I am saying is you guys have damaged me. I want
11 $150,000.
12 Q. And that is what we are trying to get to, the damages,
13 Mr. McAdory.
14 A. I'm not asking for -- and actually I am not -- I am
15 not asking for the monies that I have had to spend to move
16 Lex-Tech Automotive to another facility. That was an
17 expense incurred because of the taking of the property.
18 Q. And ---
19 A. I am not asking for damages. I am not asking for the
20 extra tens of thousands of dollars that I put into this
21 place above the 375 to get it outfitted as a garage. I am
22 not trying to be greedy. I am not trying to ask for more
23 than what I think I am owed.
24 I think 150,000, 375. Your appraiser says it is 225.
25 Yeah, he thinks there is a building on it and that has

1 value. The building has no value after the taking and after
2 the tenant moves out.
3 Q. Well, let's get to the how you figure your building has
4 no value. Yesterday you used a term which usually
5 appraisers use. It is called highest and best use. And you
6 testify the highest and best use for the property in the
7 before was as a garage; is that correct?
8 A. That is what it is outfitted. That is what it was
9 originally built for. That is what it is now outfitted for
10 is a garage.
11 Q. What criteria did you use to determine that?
12 A. Because it is a what we would call a butler style
13 building. It is a small office in the front. It has a
14 large raised elevated shop area. It allows for car lifts.
15 It had a door on the back. We added another door to make it
16 more usable friendly. It is an automotive repair shop.
17 That is how it is rigged. That is how it is wired.
18 Q. So if the original owner had built a hotdog stand on it
19 then your contention would be the highest and best use is as
20 a hotdog stand; is that correct?
21 A. I think to sell hotdog is a little different than to
22 rebuilt engines in vehicles. There is a little more space
23 and logistics involved in working and services cars than it
24 is boiling hotdogs.
25 Q. Now let's talk about your highest and best use in the

1 after. You've never come out and said what that was. You
2 just said it is not a garage.
3 A. Okay.
4 Q. So what is the highest and best use in the after?
5 A. Zero.
6 Q. I am talking about what the highest and best use. Not
7 what the value is. What is the highest and best use ---
8 A. After ---
9 Q. --- of the property?
10 A. --- the taking?
11 Q. Yes, sir.
12 A. Zero. It has no value. It is built and outfitted as a
13 garage. After the taking and after the tenant leaves, the
14 building has no value. Someone can come in and possibly
15 rent it for a very reduced rate, whatever it be.
16 Maybe it is a Pappa Johns or a Dominos or a florist.
17 Somebody is going to have to come in and make a substantial
18 investment in the property to change it to meet whatever
19 needs it may be.
20 Q. And what rate do you think that would be if they had to
21 rent it?
22 A. Seventeen hundred dollars a month rent I think would be
23 the max rent that that place would pull. And I come to that
24 because I consulted with a commercial real estate broker and
25 said, hey, if -- and I explained to him about the loss of

1 signage and the loss of parking. And I said what can I rent
2 this for or what could I sell it for.
3 He -- whatever -- however they come up with value, he
4 said Glen, he said I think I can -- maximum would be $1,700
5 of rent -- a month in rent, and if you do whatever
6 formulate -- formula they use to come to a total value. He
7 came up with $224,000 as the value of the property, meaning
8 the place.
9 Q. You mean the dirt?
10 A. I couldn't -- no, the place. If I can rent it for
11 1,700 -- obviously they are not going to rent dirt.
12 Q. So the building ---
13 A. He came -- anyway he came to a conclusion it was worth
14 $224,000. I am like wow, the County says it is worth 225.
15 I have got two independent people giving me about the same
16 number. How can I argue with that.
17 Q. Is -- who is this appraiser -- or ---
18 A. It was -- I believe it was ---
19 Q. Well, how about this. We will make it easy. Is that
20 person in this courtroom anywhere?
21 A. No.
22 Q. Okay. Now, if somebody is going to rent property
23 there's not going -- they are not -- they are going to rent
24 for use of the building, correct?
25 A. Yeah, they are not going to ---

1 Q. So that building ---
2 A. --- come in and rent the dirt.
3 Q. --- does have value, correct; you put -- placed that
4 value of $1,700 a month on that, correct?
5 A. That is what I was -- or when I asked I was told that
6 would be the maximum place -- or amount of rent that I could
7 receive.
8 MR. MITCHELL: Thank you, Your Honor. I have no other
9 questions.
10 THE COURT: Any redirect of the witness?
11 MS. WALSH: No further questions, Your Honor.
12 THE COURT: Sir, you may step down.
13 THE COURT: Anything further from the landowner?
14 MR. MURPHY: Nothing, Your Honor. We rest.
15 THE COURT: Madam Forelady, ladies and gentlemen, the
16 landowner has rested its case. There are some motions and
17 matters of law that I need to take up outside of your
18 presence. During this break please do not discuss the case
19 in any manner whatsoever. And please leave your notepads in
20 your seats.
21 We should be out fairly briefly after which we will
22 proceed with the County's presentation. If you would go
23 with the bailiffs.
24 (WHEREUPON, the jury exits the courtroom at 9:58 a.m.)
25 THE COURT: You may be seated. The landowner has

1 rested. Are there any motions?
2 MR. MURPHY: Yes, Your Honor. For the record -- and I
3 realize it is kind of odd in a condemnation case given the
4 dynamics. But we move for a directed verdict in the amount
5 of $150,000 in favor of the landowner since that was the
6 only testimony that has been proffered at this point and
7 there has been nothing to contest that amount of just
8 compensation.
9 THE COURT: Any response from the County?
10 MR. FERRARA: Yes, Your Honor.
11 THE COURT: You may proceed.
12 MR. FERRARA: Well, first of all the landowner
13 testified that the fair market value is $150,000 for the lot
14 because the building has no value. But then he turns around
15 and says but I can rent it for $1,700 a month and no one is
16 going to rent dirt so $1,700 a month includes renting the
17 dirt and the building so the lot does have value. So the
18 methodology that the landowner proposed to the court and to
19 the jurors is flawed.
20 Then he says well he can sell the lot for $225,000 but
21 then the highest and best use of the property is zero. So
22 based on methodology that the landowner uses to arrive at
23 this value of $150,000 is flawed.
24 The County hasn't presented any evidence because we
25 haven't put up our appraiser to refute this absurd, flawed

1 methodology to arrive at a value of $150,000.
2 The standard for a directed verdict, Your Honor, is
3 whether there is any evidence supporting the County's
4 position in the matter. And you must view that evidence and
5 all reasonable inferences in the light most favorable to
6 Charleston County.
7 Our evidence is what we presented through Peter
8 Valiquette and what you have heard from the landowner. Our
9 evidence is that the County took 1,287 square feet but
10 there's a reasonable per square foot value of 825 dollars.
11 You arrive at $31,000 dollars in value of the dirt taken.
12 And that's in conformance with the statute.
13 The statute also allows any reduction in value to the
14 remainder. The County cost - it cured the cost for the
15 termination of the parking up front at a cost of $15,000.
16 The County cured the cost of the sign for a cost of 4,500.
17 The County tendered a total of 31,000 -- 19,000 -- I mean
18 15,000 plus 4,500 into the court, 51,560 which this
19 gentleman has had the benefit of, walked away with it to buy
20 a new building or do whatever.
21 But back to the methodology of how you arrive at his
22 value of $150,000 is flawed. And he said when Mr. Mitchell
23 asked him a question, how did -- what is the $225,000 that
24 you deduct from the 375 what does that represent? He said I
25 don't know.

1 Mr. Mitchell said do you understand that's just the
2 dirt value. He said I'm not an appraiser; I do not know how
3 Crider appraised the property. Yet he is giving a value of
4 the fair market value of the property.
5 Your Honor, there's -- the evidence is flawed. The
6 evidence is not there to support McAdory's value of
7 $150,000. So with that we ask that you deny the motion for
8 the directed verdict, allow us to put up the appraiser so
9 the appraiser can tell the court, tell the jury accurately
10 with expertise what the just amount -- the amount of just
11 compensation is and how the jury should determine the amount
12 of just compensation.
13 THE COURT: Anything further from the landowner?
14 MR. MURPHY: Your Honor, we would also just renew our
15 objection for your limiting instruction with regard to Mr.
16 McAdory testifying about how the improvements enhanced the
17 value of the property.
18 THE COURT: I'm sorry, I didn't hear you.
19 MR. MURPHY: We would just renew our objections with
20 regard to the court's instructions limiting Mr. McAdory from
21 testifying about how the improvements enhance the value of
22 his property.
23 THE COURT: I didn't limit him in discussing the
24 enhancements. He discussed those. I just limited any
25 dollar amount because he is not entitled to a dollar for

1 dollar reimbursement.
2 MR. MURPHY: I stand corrected. With regard to the
3 dollar amount we just renew our objections, Your Honor.
4 THE COURT: The court stands by its earlier ruling on
5 the evidentiary issue as the landowner's position is not
6 supported by black letter precedent.
7 The court allowed him to testify regarding any
8 enhancements or updating that he provided to the building as
9 it was relevant on the issue of the highest and best use of
10 the property and his lay opinion as the landowner.
11 Any dollar for dollar amounts were not relevant and
12 would mislead the jury, were more prejudicial than
13 probative. As under case law any sort of real estate
14 evaluation formula he is not entitled to a dollar for dollar
15 reimbursement of those upfits. He is entitled to the fair
16 market value of the property, any diminution in addition to
17 his remainder and any benefits provided pursuant to 28-2-360
18 as defined by 28-2-370.
19 In considering a motion for directed verdict the court
20 looks at the evidence in the light most favorable to
21 nonmoving party. If there exists any questions of facts
22 those are to be resolved by the jury and if those questions
23 of facts were susceptible to more than one inference.
24 The motion is denied. Clearly the landowner pursuant
25 to statute is entitled to compensation as a matter of law.

1 However, the amount of just compensation pursuant to
2 28-2-370 is clearly a question of fact to be resolved by the
3 jury.
4 Are we ready to proceed?
5 MR. MURPHY: Yes Your Honor.
6 MR. FERRARA: Yes, Your Honor we are.
7 THE COURT: Please bring in the jury.
8 THE COURT: I need to ask a question while they are
9 bringing in the jury. What is the -- and we have used these
10 numbers several times. I want to make sure that my notes
11 are accurate.
12 Mr. Rivers, please close that door for me.
13 (Mr. Rivers complied.)
14 THE COURT: Thank you, sir.
15 It is my understanding that the total size of this
16 parcel before the taking was 1,164 square feet or point --
17 0.5424 acres.
18 MR. MURPHY: It was 11,064 square feet.
19 THE COURT: I'm sorry, did I say one thousand one
20 hundred ---
21 MR. FERRARA: Yes.
22 THE COURT: I mean to say ---
23 MR. FERRARA: Eleven thousand sixty-four square feet.
24 THE COURT: Eleven thousand sixty-four square feet.
25 MR. FERRARA: Or .254 acres.

1 THE COURT: Wait one second. .254 acres. And what is
2 it after the taking?
3 MR. FERRARA: After the taking it is .224 acres.
4 THE COURT: And how many square feet?
5 Don't let them in here.
6 MR. FERRARA: If you will -- 9,777 square feet.
7 THE COURT: Nine thousand seven hundred and
8 seventy-four square feet?
9 MR. FERRARA: Seventy-seven.
10 MR. MURPHY: Seventy-seven.
11 THE COURT: Seventy-seven square feet. So it is 9,777
12 square feet after?
13 MR. FERRARA: Yes, ma'am.
14 THE COURT: Eleven thousand sixty-four before?
15 MR. FERRARA: Yes, ma'am.
16 THE COURT: Point-two-five-four acres before and
17 point-two-two-four after?
18 MR. FERRARA: Yes, ma'am.
19 THE COURT: Okay. I needed to make sure those figures
20 were accurate. Thank you so much.
21 You may bring them in if they are out there, Mr.
22 Rivers.
23 (WHEREUPON, the jury enters the courtroom at approximately
24 10:08 a.m.)
25 THE CLERK: All jurors are present, Your Honor.

1 THE COURT: You may be seated. Ladies and
2 gentlemen, we will now resume testimony. The County may
3 proceed.
4 MR. MITCHELL: Thank you, Your Honor. The County would
5 like to call Mr. Charles M. Crider to the stand.
6 THE COURT: Sir, if you would come to the stand to be
7 sworn.
8 CHARLES CRIDER, having first
9 been duly sworn, testified as follows:
10 THE CLERK: State your full name, sir, when you are
11 seated and spell your last.
12 THE WITNESS: Charles Franklin Crider, C-R-I-D-E-R.
13 THE COURT: You may proceed.
14 MR. MITCHELL: Thank you, Your Honor.
15 THE COURT: You are welcome.
16 **DIRECT EXAMINATION BY MR. MITCHELL OF MR. CRIDER:**
17 Q. Mr. Crider, can you briefly introduce yourself to the
18 jury.
19 A. Yes. My name is Chuck Crider. I am a real estate
20 appraiser, Counselor, of real estate as well as an educator
21 of real estate courses and materials.
22 I currently live in Simpsonville, South Carolina, but
23 grew up right here over on James Island and lived here all
24 my life up until the time I graduated from the Citadel and
25 moved up.

1 Q. And why are you here today?
2 A. I have been asked to opine as far as the valuation of a
3 piece of property over on Folly Road. It is not a voluntary
4 thing. I am actually under subpoena to be here. So I guess
5 the answer to your question is I have to.
6 Q. Fair enough. Let's talk about your educational
7 background. Can you talk to us about high school and on
8 past that?
9 A. As I mentioned, I grew up over on James Island back
10 when there was a Fort Johnson High School. I went there.
11 And like I said, lived there. Graduated from the Citadel.
12 At that time my parents moved up to Greenville.
13 And after graduating from the Citadel I went to work
14 with other companies and moved to various places and
15 ultimately went to work with my dad in Greenville as a real
16 estate appraiser.
17 Q. And can you talk to us a little about your professional
18 education?
19 A. I when I decided to become an appraiser my actually I
20 guess you would call him my God father lives here in
21 Greenville and he is also an appraiser -- oh, I'm sorry in
22 Charleston. He is also an appraiser.
23 At that time the University of Florida was starting a
24 program for receiving the MAI designation. It was the only
25 program that was available at the time at the college -- or

1 graduate level.
2 So I decided to go back to school. And I got my
3 master's degree from the University of Florida with a
4 concentration in real estate and urban analysis and
5 ultimately performed a demonstration report which is
6 basically the same thing as a thesis as far as real estate
7 is concerned.
8 Took the comprehensive examine which is a two-day
9 four-part exam, format wise similar to the Bar or the CPA
10 exam and after being reviewed and critiqued by my peers
11 received the MAI designation.
12 Q. Does that designation do anything for you?
13 A. It is -- it is the highest designation that an
14 appraiser can achieve. I don't want to imply I am the only
15 one that has that designation. There are many here in
16 Charleston as well.
17 But it is a very prestigious I believe designation that
18 an appraiser can achieve. And it is the highest designation
19 that they can achieve.
20 Q. Is there any other certificate you hold?
21 A. I am a certified general designation from the State of
22 South Carolina which again is the highest designation an
23 appraiser can get from the State. I am also a real estate
24 broker.
25 Q. Okay. I understand the highest real estate thing. But

1 can you appraise residential property?
2 A. Yes.
3 Q. Can you appraise commercial property?
4 A. Yes.
5 Q. Is there any property in the State of South Carolina
6 you cannot appraise?
7 A. Given competency - and that is always a criteria - no
8 there would not be. Again, given competency.
9 Q. Another unique thing about you is your teaching
10 experience. Can you tell us about that?
11 A. I have always had a passion for teaching. I have got
12 two daughters right now studying to be teachers. I have
13 been an adjunct professor at Clemson University teaching in
14 the areas of real estate, real estate appraiser,
15 specifically as well as real estate finance.
16 I currently am an instructor at Greenville Tech where I
17 teach the introductory appraisal courses. I teach for the
18 Appraisal Institute and the Appraisal Qualification's Board
19 and the Appraisal Standard's Board. And for the Standard's
20 Board I teach the ethics class that all real estate
21 appraisers must adhere to.
22 Q. You mentioned this API or Appraisal Institute. What is
23 that?
24 A. The Appraisal Institute is the world leader in
25 providing appraisal education. And that is who provides the

1 MAI designation.
2 Q. Okay. Have you ever been qualified as an expert
3 before?
4 A. I have been qualified in both state and federal courts
5 as an expert witness, yes.
6 Q. Are you familiar with the Charleston area?
7 A. Again having grown up here or on James Island actually,
8 I lived Fort Johnson Estates and then ultimately Stiles
9 Point. My wife and I used to ride horses actually on Folly
10 Road.
11 Q. Did you not work at the Bradley Hess Station on Folly
12 Road?
13 A. Yes, I did.
14 Q. That was just down the street from where this property
15 is at; is that right?
16 A. Yes, that was before the Connecter and before everybody
17 else moved to James Island, yes.
18 MR. MITCHELL: Your Honor, we would like to tender Mr.
19 Crider as an expert in real estate -- in real estate
20 appraisal.
21 THE COURT: Any objection?
22 MR. MURPHY: No objection.
23 THE COURT: So admitted.
24 MR. MITCHELL: Thank you, Your Honor.
25 BY MR. MITCHELL:

1 Q. Mr. Crider, let's get this out of way real quick. Are
2 you being paid to be here?
3 A. Yes, I am.
4 Q. Do you know of any experts that volunteer their time to
5 come testify in court?
6 A. No, sir.
7 Q. Now let's talk in general just about an appraisal. Can
8 you tell us about what an appraisal is?
9 A. Generally speaking an appraisal is a process where a
10 trained professional goes out and looks at a piece of
11 property, walks through, measures, evaluate if you will the
12 condition of the property, looks at things like highest and
13 best use, considers comparable properties whether it be in
14 form of sales or rental, and then ultimately value the
15 property based upon that information and concludes their
16 opinion as to what that property is worth.
17 Q. Is there a difference between like an appraisal for say
18 like a bank and an appraisal in this case a condemnation or
19 eminent domain?
20 A. There are a couple of differences I guess. In the --
21 in a bank appraisal we do exactly what I just described.
22 You may have had one if you have refinanced or bought a
23 home, the appraiser came out and gave their opinion of
24 value.
25 In a condemnation or eminent domain type of appraisal

1 in the before, which is just basically the same as the bank
2 appraises, one of two things happens. Either the entire
3 property is valued, and if that's the case it is done
4 exactly the same way as a bank appraisal. Or only the land
5 portion is valued.
6 The way the requirements are for appraisers, an eminent
7 domain is you either value the total before and the total
8 after recognizing benefits or damages or you value part
9 taking.
10 And so there are two possibilities of how to evaluate
11 it in the before. The big difference is in the after and
12 understanding how to consider value recognizing that now the
13 road improvement or power line or sewer line or whatever it
14 may be is in place and what's the impact on the remaining
15 property.
16 Q. Now, I can't remember if we discussed this. Can you
17 kind of teach us about fair market value. What is fair
18 market value?
19 A. Fair market value is a term that appraisers recognize,
20 the what a willing buyer and willing seller would buy or
21 sell a property for in the open market each being
22 knowledgeable and prudent, each acting in their own best
23 interest and ultimately determining what the value of the
24 property is.
25 And there's a small caveat to that. Because if there

1 wasn't, we wouldn't need appraisers. Sometimes buyers and
2 sometimes sellers make mistakes. And that's why we have to
3 have an appraisal, a third party if you will, to look at the
4 market to determine if in fact that is the right price.
5 Sometimes sellers sell too cheap. Sometimes buyers pay too
6 much for property.
7 Q. Now we have thrown around these two terms. And I don't
8 know if anybody has defined them. But when we are talking
9 about in the before, what does that mean?
10 A. In the before is what the property looks at without the
11 project whatever it would be being in place. So that's the
12 before value. There is no in this case widening of Folly
13 Road; there is no impact at all to the subject. What is its
14 value as it sits today. That's the before.
15 Q. And when you say value you mean fair market value?
16 A. Fair market value, yes.
17 Q. And when you talk about in the after?
18 A. The after it's kind of unique to this process. There
19 is a snapshot in time where we have the before value and
20 literally that same instant the project is in place, the
21 road widened, everything is down at that instant. And
22 that's the difference that we talk about before minus after.
23 They both happen simultaneously. That's how we come up with
24 our opinion of what's shown paid to the landowners.
25 Q. Now when you are doing these appraisals there's three

1 different methods that you use; is that correct?
2 A. There potentially is, yes.
3 Q. And what are those three methods?
4 A. The three methods of valuation might be the cost
5 approach, the sales comparison approach, and the income
6 approach are the three methods of valuation. Not all are
7 always necessary. But those are the three that are
8 available to appraisers.
9 Q. And can you quickly discuss on the comparable
10 approach - I think that is what you called it - what does
11 that exactly deal with?
12 A. The sales comparison approach is looking at properties
13 that are similar to the subject that have sold and what did
14 the market pay for those properties. And we take those
15 sales, compare that to our subject to get an indication of
16 value.
17 Q. Now how about the cost approach?
18 A. The cost approach briefly is what it would cost to
19 build a building knew and then depreciate it into its
20 current state.
21 Q. And the income approach?
22 A. We look at comparable rentals of other properties in
23 the market and what are they leasing for. We subtract from
24 that rental income the expenses of owning real estate
25 pursuant to that lease.

1 In other words, leases are different. In a house lease
2 you are probably paying the taxes and the insurance if you
3 are the landowner. And a commercial property it is not
4 unusual for the landlord to pay virtually no expenses,
5 minimal. And then we take that income that's left after the
6 expenses and we turn that into value. It's what someone
7 would pay to receive that income stream every month.
8 Q. Now I was just thinking about this while you were
9 talking. On the comparable sales method how do you make
10 those other properties out in the market, when they sell how
11 do you make them similar to the subject property? When I
12 say subject property I mean the property we are discussing.
13 A. You make adjustments to those sales. You again you are
14 trying to make those comparables as similar as possible.
15 And not all properties are created equal. Some have better
16 access, some have worse. Some have more frontage. Some
17 have less. There are differences in properties. And as a
18 result of that we make adjustment to make them like the
19 subject.
20 Q. And so adjustments can be like one lot is much larger
21 than the other?
22 A. Potentially, yes.
23 Q. Like if one is on the corner versus this subject
24 property not being on the corner?
25 A. Potentially, yes.

1 Q. Now when you look at these three methods inside your
2 appraisal at the end of the day how do you decide which one
3 to use?
4 A. It is based primarily on experience and training. You
5 really have to understand the property and what you are
6 trying to appraise and what's most effective in reflecting
7 the value, or in this case the compensation that would be
8 paid as a result of the acquisition.
9 Q. Okay. We are going the talk about another term I think
10 was thrown around. It is called a cost to cure. Can you
11 describe what a cost to cure is?
12 A. Sometimes when property is impacted by an acquisition
13 something gets broke if you will and a cost to cure is a
14 method of fixing that problem as it relates to the market
15 for a commercial building or some other type of property.
16 And the cost to cure is the cost that it takes to fix what
17 has gone wrong as part of the acquisition.
18 Q. Now, during your appraisal process there is another one
19 that's been thrown around here a lot here lately is highest
20 and best use. What does that mean to you?
21 A. Highest and best use is the -- let me first start by
22 saying there are two ways of looking at highest and best
23 use. One as though vacant.
24 In other words, for just a moment we put our blinders
25 on and we say that building is not there; it is vacant land.

1 And we evaluate all property. And it's a requirement for
2 market value to evaluate the highest and best use as though
3 vacant. That must be done.
4 The second analysis is the highest and best use as
5 improved, and dependent upon the scope of the assignment
6 that may also have to be considered.
7 In both scenarios we consider four criteria: what is
8 legally possible, what is physically possible, what is
9 financially feasible, and what is maximally productive. All
10 four of those tests must be met for the highest and best use
11 to be satisfied.
12 Q. Now the current use of the property, say there is a
13 hotdog stand on it. Does that necessarily mean it is the
14 highest and best use?
15 A. No.
16 Q. You still go through this analysis to determine what
17 would best be on that property?
18 A. Yeah, the use that a property is being put to does not
19 mean that that is the highest and best use of a property.
20 That's what that particular person is using the property
21 for. That does not mean it is the highest and best use.
22 Q. Now let's talk about the specific appraisal you did for
23 this condemnation. Do you remember what the date of value
24 of your appraisal was?
25 A. The date of value is the date of condemnation which is

1 July 11th of 2012.
2 Q. Now can you describe generally the Folly Road area.
3 A. I consider Folly Road basically when you come over the
4 bridge. And I am talking about the Wappoo Cut bridge.
5 Cross over Maybank Highway. There are banks. There are
6 medical buildings based on built -- medical building right
7 there as you come across.
8 There are older homes on the left-hand side. Many of
9 them have been renovated inside into office space. There,
10 going on down, are restaurants. There are convenience
11 stores. It is a very developed area and very heavy
12 travelled road.
13 Q. Now when you look at -- looked at property was there a
14 legal nonconforming use in the before for the property?
15 A. Legal nonconforming use is a term that we talk about as
16 part of highest and best use. When I said what's legally
17 permissible, what would zoning allow. And the property in
18 the before was a legal nonconforming use.
19 As the appraisal that I performed, just so you know on
20 Page 3, I actually said it is a legal conforming use. But
21 several other places within the report I point out it was a
22 legal nonconforming use, and that just was a typo.
23 But as you heard, the engineer Peter -- like I don't
24 know how to say his last name. Peter stated the side
25 setback of the property was only about four feet from the

1 property line, and zoning requires that a minimum side
2 setback of ten feet. So just that one issue by itself makes
3 as property a legal nonconforming use.
4 Q. Now, the landowner you hear him testify that in the
5 after the legal nonconforming use and then he went through
6 all of the scenarios and how if the building got blown down
7 and he had to redo it and that he didn't have a tenant for a
8 year and he would have to go through rezoning and all that
9 good stuff and have to abide by the setbacks.
10 Would he have to abide by the setbacks now if that same
11 happened in the before?
12 A. Yeah, the -- I wasn't really clear on why he was saying
13 that. Properties are grandfathered in as part of a legal
14 nonconforming use. The use that a property is put to if it
15 becomes a more intensive use there may be some additional
16 requirements that would have to be adhered to.
17 But if you just look at the potential uses for the
18 property as it relates to zoning it is zoned CC which is a
19 commercial zoning classification by the Town of Mount
20 Pleasant. I have got a list of potential uses ---
21 Q. Excuse me, Mr. Crider, you said Town of Mount Pleasant.
22 A. I'm sorry, the Town of James Island.
23 Q. Thank you.
24 A. The potential uses that range from manufacturing to
25 wood furnishing to -- I mean I don't know many you want me

1 to read.
2 Q. But there's basically there's other permitted uses for
3 the property in the commercial -- being in the commercial
4 district; is that correct?
5 A. Yeah, just eyeballing 50, 60 different types of uses
6 with the grandfathering of the nonconformities. So that's
7 just not the case that they would have to tear down or move
8 the building or anything like that.
9 Q. So long before the County showed up there ---
10 A. Right.
11 Q. --- if Mr. McAdory's building had been burned down
12 would he have to conform to the new setbacks?
13 A. No, you can rebuild on the existing foundation. You
14 can't increase the nonconformity. But you can rebuild what
15 was there.
16 Q. In the after does that also hold true?
17 A. Yes.
18 Q. Now let's talk about what did -- what do you believe
19 just compensation is in this case?
20 A. Fifty-one-thousand six-hundred-and-seventy dollars.
21 Q. Can you say that again?
22 A. Fifty-one-thousand six-hundred-and-seventy dollars.
23 Q. Now you got to that just compensation of $51,670?
24 A. Yes.
25 Q. You determine the before value. What was that before

1 fair market value?
2 A. The value of the site, the land, $276,600.
3 Q. And that was in the before, correct?
4 A. That is in the before, yes.
5 Q. And what was that number again?
6 A. Two hundred-and-seventy-six thousand six-hundred
7 dollars. And that is land.
8 Q. Now, after the County took that portion up front -- I
9 don't want to say took because we are paying -- acquired
10 that portion up front, you also -- or your appraisal process
11 assigned a fair market value to what was left over?
12 A. That is correct.
13 Q. And what was that value?
14 A. Two hundred-and-twenty-four thousand nine-hundred-and-
15 thirty dollars was the after value. That after value has
16 subtracted from it as well a cost to cure.
17 So if you just went back to the land -- so kind of
18 compare apples and apples here. The actual value of the
19 land that was left is $244,430. That's the land. And like
20 I said, from that was the cost to cure.
21 Q. Now, sometimes I'm a little slow on the uptake. You
22 said just compensation was the 51,000 number?
23 A. Fifty-one-thousand six-hundred-and-seventy dollar.
24 Q. So that $51,000 was comprised of the dirt value which
25 was 31 -- 32,000?

1 A. Thirty-two-thousand one-hundred-and-seventy dollars.
2 That is the value of the dirt if you will.
3 Q. Plus the cost of cure for the sign which was ...?
4 A. For the sign and the parking of 19,500. That's
5 divided. Sign, $4,500. I got a sign estimate from a sign
6 company, Mr. Sheffield. And he told me that $4,500 to fix
7 the sign issue. And then a -- the parking issue to relocate
8 the parking toward the rear of the building was an
9 additional $15,000 for a total of 19,500 as the cost to
10 cure.
11 Q. Now, you talked about the before value and your after
12 fair market value, and you said that's a land only?
13 A. That's correct.
14 Q. Now but there is a building sitting on it. So why did
15 you just go after the land only?
16 A. When you evaluate a property, first of all I go out
17 there. I look at the plans. I visit the site. I go
18 inside. I walk the area. And I look at what's being
19 affected. The first thing I looked at is the building
20 itself was not being hit by the right-of-way. Because
21 sometimes that happens.
22 Q. When you say hit, what do you mean by that?
23 A. The right-of-way going through the middle of the
24 building.
25 Q. So the County is not taking any part of the building?

1 A. No.
2 Q. Okay.
3 A. So that's the first thing you look at. You look at the
4 plan sheets. You look at the property on the ground and
5 determine first of all that the building itself was not
6 being hit.
7 I then said well what is being affected as far as the
8 building is concerned. And in this case it was primarily
9 the parking but additionally the sign that needed to be
10 cured.
11 And I look at is there a method to cure what is being
12 taken for the market so that that building can live and
13 continue to get rent and have value and the property can
14 continue in existence. And in this case there was.
15 There was a sign estimate to fix it. I talked with the
16 Town of James Island. And they told me how that could be
17 configured. It is in my appraisal. And also that the
18 parking could be relocated. And now that building can
19 continue. That's step two.
20 Once that's realized -- I also quite frankly looked at
21 where does the landowner get treated most fairly. It's
22 possible that as part of an acquisition the value of the
23 before minus the value of the after is zero.
24 If you have got a hundred acres of land and somebody
25 takes two square feet, there is no real difference. Where

1 does the landowner get treated best.
2 And in this case because land values on Folly Road are
3 $25 a square foot if I had looked at the total property
4 value -- and there's evidence of this. The landowner would
5 have received about $16,000 in compensation. That is the
6 difference in the value of the before and the value of the
7 after. In my case the way I did it he received $51,670
8 which I thought was fair.
9 Q. Now, as part of your appraisal amounts you look at the
10 highest and best use of the property in the before.
11 THE COURT REPORTER: I'm sorry, Your Honor, I am having
12 trouble hearing.
13 THE COURT: Mr. Mitchell, if you could speak up. The
14 court reporter is having a problem hearing your questions.
15 MR. MITCHELL: Absolutely, Your Honor. I can speak up
16 for you.
17 THE COURT: Thank you.
18 BY MR. MITCHELL:
19 Q. Now Mr. Crider, in the before you did a highest and
20 best use analysis; correct?
21 A. That's correct.
22 Q. Can you talk us through that highest and best use
23 analysis?
24 A. Sure. The same core criteria we just talked about. I
25 looked at zoning, what was permitted to be used in the

1 property, what did the existing site have to offer as far as
2 its physical location and physical size. Those are our
3 first two criteria, legally permissible and physically
4 possible.
5 And the third thing was financially feasible. And you
6 look at Folly Road and you see the commercial development in
7 the area, you see the new buildings where the Nason Centers
8 have gone up, you look at where McDonald's relocated. And
9 there is commercial activity.
10 There's no question that -- you wouldn't put a house on
11 this site. So that leads us to a commercial use. And
12 because of the potential for commercial construction, that
13 became the financially feasible use.
14 Now you have to determine timing. Maximumly productive
15 deals with timing as well. If you remember a year or two
16 ago and even quite frankly today there is still a lot of
17 uncertainty in the market. And investors don't like
18 uncertainty. They don't like when we can't balance our
19 budget or meet our debt ceiling. They don't like when
20 financing is difficult to obtain. They don't like it when
21 markets are uneasy or there is turmoil.
22 And things are only now starting to return to what I
23 would call stability where an investor might look to now
24 start building a new building. So it was my opinion the
25 highest and best use as though vacant was a commercial use

1 which is consistent with everything else on Folly Road.
2 Q. Now when you say commercial use it could be an office,
3 nail salon; any of those?
4 A. It could be, yes.
5 Q. Now, after you did your highest and best use analysis
6 in the before, you did a sales comparison analysis; correct?
7 A. That is correct.
8 Q. Can you talk us through what you did there?
9 A. As I mentioned, I -- once you determine how you're
10 going to value the property, in this case the primary
11 consideration was land value.
12 I went to the market, if you will, and started doing
13 research. And that's what this book represents is just most
14 of the research that we did in finding availability land
15 sales in the area.
16 I found the sale of Bojangles that is right down the
17 street. It sold for about $34 a square foot. I found this
18 sale right next door -- or just down the street of the
19 Duncan Donuts. And after evaluating it, it sold for about
20 $21 a square foot.
21 Went over to Maybank Highway and found the sale of
22 another commercial property. And it sold for about $34 a
23 square foot. And then I looked at the old McDonald's site.
24 I still call it the old C&S Bank because that is where my
25 mom used to work. But right kind of cattycorner -- where

1 the Nason building is right now. And that building
2 obviously closed and was torn down and the new Nason Center
3 built.
4 That land sale by itself sold after consideration of
5 demolition of the old McDonald's for about $20 a square
6 foot -- I'm sorry, for about $16 a square foot. I
7 apologize. It's inferior than the subject because of the
8 way they reconfigured Old Folly Road and Folly. You
9 actually have a median that separates that.
10 So I made a positive adjustment to that to make it like
11 the subject and ultimately concluded that the value of the
12 subject site per square foot of land was $25 dollars per
13 square foot.
14 Q. Now can you describe the acquisition by the County?
15 A. The area being acquired has previously been discussed.
16 And I won't go too far into this. I know you have heard
17 enough. Is across the front the property has about 60 feet
18 of frontage across the front. And it's coming into the
19 property to within about six feet of the building. That's
20 the right-of-way now.
21 From the current road travelled area there's about five
22 or six feet that the road itself is coming in. The present
23 right-of-way if you happen to see a picture or if you go out
24 there or whatever you are going to do, there's a telephone
25 pole right in front of the subject property. And there is a

1 little grassy area where the asphalt starts on the building
2 side of that telephone pole.
3 The present right of way is just inside that grassy
4 area in front of the current telephone pole. That is where
5 the present right of way is.
6 The road is moving to within that present area. Then
7 you will have a bike path. And then you will have the
8 sidewalk. And then there's about I think Peter testified
9 about ten feet of open area to where the new right of way is
10 going to be. And then it is about roughly six feet from
11 that point over to the building.
12 Q. So now you have concluded that the value of the
13 property that -- just the dirt is worth $25 a square foot?
14 A. Yes, sir.
15 Q. And you take that and you multiply it times how many
16 square feet, and what number do you come out with?
17 A. When you say the square feet are you talking about the
18 acquisition area or the total property?
19 Q. I am sorry. The total property.
20 A. The total property you get $276,600.
21 Q. And that is your before value that we discussed
22 earlier?
23 A. That is correct.
24 Q. Okay. Now, let's talk about how you determined the
25 after value. Can you talk us through your highest and best

1 use analysis in the after?
2 A. Again, I looked at was the building being affected,
3 what was being acquired whether it was parking or what have
4 you. And then I also looked at where the property owner
5 would be most appropriately compensated.
6 And in that highest and best use it was apparent to me
7 that that in valuing the building as it relates to market
8 value - and that is so that building can survive - we needed
9 to cure the sign issue. We needed to cure the parking
10 issue. And that relates to physical, legal, financially
11 feasible, and maximally productive uses of the site.
12 Q. And so your highest and best use opinion in the after
13 is?
14 A. Is the same, a commercial utilization.
15 Q. As vacant, correct?
16 A. As though vacant, yes.
17 Q. Does that mean that he has to go tear down the
18 building?
19 A. No.
20 Q. Now, you did -- did you do a completely different
21 market or sales comparison approach?
22 A. The same sales used in the before were also used in the
23 after to determine the value per square foot. So after the
24 acquisition the land is still worth $25 a square foot. We
25 didn't -- we didn't change that at all.

1 Q. So you took that $25 a square foot times the size of
2 the remaining property -- remaining property?
3 A. That's correct.
4 Q. And you come up with an after value of?
5 A. It actually is $244,425. That is the land value. But
6 methodology wise I have still got to -- everything has got
7 to balance. So I have got a back page here that everything
8 has to balance on. So I have to subtract from the land the
9 cost to cure. That's mathematically the only way it would
10 balance. But that doesn't mean the land is not worth 244.
11 It is. But the cost to cure had to be subtracted from that.
12 Q. Now, you didn't mention using the cost approach. Why
13 didn't you use the cost approach?
14 A. The building is almost 30 years old. Generally a cost
15 approach on a building 30 years old is an exercise in
16 mathematics. It just doesn't make sense.
17 Q. Now, you didn't mention you did an income approach.
18 A. No.
19 Q. Now why didn't you do the income approach?
20 A. Had I valued the property in its entirety in the
21 before -- and I have looked at two income analysis. And I
22 have, and I do have rentals in the area that -- that were
23 considered.
24 Had I valued the property in its before in its entirety
25 the property owner would have received about $16,000 for the

1 loss of 1,287 square feet, which is just not right. And
2 that's why I just did the land value plus the cost to cure.
3 Q. Now, we mentioned an appraisal done for the bank ---
4 A. That's correct.
5 Q. --- to acquire the property or the mortgage for the
6 property. Did you have a chance to look at that appraisal?
7 A. Yes, I did.
8 Q. Can you discuss your thoughts on that appraisal?
9 A. I know the appraiser that did it very well. We are
10 very similar in our discussions of James Island. We are
11 very consistent in our discussions of highest and best use
12 for the property.
13 In fact, we are -- when I say very, we are the same.
14 We are very consistent in our land value. He put $25 a
15 square foot on the land. I put $25 a square foot on the
16 land.
17 Q. No, whoa; wait a second. He put $25 a square foot on
18 the land when he purchased the property?
19 A. That's correct.
20 Q. Isn't that what you put?
21 A. It's exactly the same.
22 Q. Okay.
23 A. And I saw his appraisal about three days ago maybe. So
24 it is not like I saw his and did mine or he saw mine and did
25 his. He did his two years or so before. So we are exactly

1 the same in that -- he -- he also did look at the property
2 as improved. Because again he was doing it for the bank.
3 And he went through an income approach as part of that
4 analysis. And I've gone through and looked at his income
5 approach. And I've looked at the income that Mr. McAdory
6 just testified to that I think it was Mr. Mizell told him,
7 the $1,700 a month that could be generated. I compared that
8 to the bank, financing, and the Mr. Mizell rental. And the
9 difference is less than 14 -- about $1,400 a year difference
10 in income.
11 If you convert that into value there's the $16,000 I
12 was talking about. Because that's the total property value.
13 That is what the bank financing looked at. That is kind of
14 the before.
15 Mr. Mizell looked at it in the after and said I can
16 rent it for $1,700 after. The difference in those before
17 and the after is $16,000. And I just didn't think that was
18 fair. Okay, that is why I did it my way.
19 Q. That's fine. When I go to talk to the car dealer I ask
20 him what is my monthly payment going to be. So what does
21 that break down into for the appraisal that he did for
22 financing; did the appraiser discuss a monthly rental
23 amount?
24 A. Yes, he did.
25 Q. And what was that amount?

1 A. It was around nine dollars a square foot for the
2 building. I actually think you have my sheet of paper.
3 Q. Does that equate to about $1,800 a month?
4 A. Something like that, yeah.
5 Q. And that was before the County ---
6 A. That is correct. Yeah, his is a true before. He --
7 he -- that was a before.
8 Q. And in the after Mr. McAdory said he could get $1,700 a
9 month out of it?
10 A. Right.
11 Q. So the value with his income approach didn't change
12 from the before to the after, did it?
13 A. Sixteen thousand dollars is the value difference had we
14 looked at the total property versus the way I did it with a
15 land value plus the cost to cure.
16 MR. MITCHELL: Your Honor, the court's indulgence for a
17 second?
18 THE COURT: Uh-huh.
19 (Pause.)
20 MR. MITCHELL: Just a few more questions and then I
21 will shut up.
22 Q. You heard Mr. McAdory's testimony and you heard his
23 methodology how he comes to value.
24 Mr. McAdory is not an appraiser. He doesn't profess to
25 be an appraiser. He just -- somebody is trying to buy some

1 property to do -- to make some money off of it later.
2 Is there anything with his methodology that you have
3 concern with?
4 A. He -- there's an apples and oranges kind of process.
5 You can't do it one way in the before and say building and
6 land and then another way in the after and just say land.
7 You've got to be consistent in the way you approach value
8 and the way you assign value to property. I just don't
9 think he was consistent in that approach.
10 Q. Now when he testified that the building after the
11 taking is worth zero dollars, that means the dirt value;
12 because there's no longer building value, the dirt value is
13 $150,000; is that correct?
14 A. No, that's not -- you are not exactly right in the way
15 you are doing that.
16 Q. Then ---
17 A. I apologize.
18 Q. Then correct me, please.
19 A. The -- again, we are kind of mixing two different
20 things. It's the before value minus the after value. And
21 if we -- if we would look at it that way it would not have
22 been most advantageous to the property owner.
23 In this case it was a strip take. It was -- it was
24 $31,000 or something for the land. The building still has
25 value. The realtor said so. Mr. McAdory thought he could

1 rent it for $1,700 a month. Nobody is renting the dirt for
2 $1,700 a month. The building has value. And that's what we
3 had to recognize.
4 If you do it with the building in the before, you have
5 got to recognize it in the after the building is still
6 there.
7 See, at the end of the day he still gets to go home and
8 have the building and the remaining property that he is
9 going to rent for $1,700 a month. And you can't ignore
10 that.
11 MR. MITCHELL: Thank you, Mr. Crider. Your Honor, that
12 concludes.
13 THE COURT: Any cross-examination of the witness?
14 MR. MURPHY: Yes. Thank you.
15 THE COURT: You may proceed.
16 **CROSS-EXAMINATION BY MR. MURPHY OF MR. CRIDER:**
17 Q. Good morning, Mr. Crider.
18 A. Good morning.
19 Q. If I understand you correctly when you talked about the
20 $16,000 difference if you applied the income approach in the
21 before and the after of the property is that what you were
22 talking about?
23 A. Would you ask me again. I'm sorry.
24 Q. When you were talking about how you were doing the
25 landowner a favor by not -- by appraising it this way you

1 talked about an alternative approach that you would have --
2 that would have ended up with a $16,000 difference; and what
3 was that?
4 A. Yes, sir. Well, what I did -- and I didn't mean to say
5 I would be doing him a favor. If that is the way it came
6 out, I didn't mean it that way.
7 I thought it was most advantageous to do it the way I
8 did. The basic way that I looked at it was the bank
9 appraisal and how that appraisal was done.
10 In fact if you look at the exact numbers and got down
11 to NOI you get a number. And I looked at the $1,700 a month
12 that Mr. McAdory and Mr. Mizell said they could rent in the
13 after.
14 So now I have got apart from me two different people, a
15 bank appraiser and the property owner, saying here is what
16 it could rent for.
17 And I took the difference in those two incomes, those
18 net operating incomes after expenses and converted that into
19 value. And it come out to around $16,000.
20 Q. Okay. And let's talk a little bit about the history of
21 this property. This was purchased back in -- the former
22 owner purchase the property back in 2005; is that correct?
23 A. Yes, that is correct.
24 Q. And it was purchased -- and it was purchased for a car
25 title loan shop; is that correct?

1 A. That is what was there, yes.
2 Q. They paid $325,000 for this property; is that correct?
3 A. Land and building. That is correct.
4 Q. Okay. And at that point what was the highest and best
5 use of the subject property?
6 MR. MITCHELL: Objection ---
7 A. Commercial
8 MR. MITCHELL: --- Your Honor.
9 (WHEREUPON, a bench conference was had.)
10 THE COURT: The objection is sustained. You may
11 proceed.
12 Q. And did you do any research into that sale at all?
13 A. Other than to report it.
14 Q. And you could have used that sales comparable sale,
15 couldn't you in this case?
16 A. For what? I don't ---
17 Q. No, you couldn't? Okay. And this comes down to about
18 $29 a square foot?
19 A. Okay.
20 Q. And since that appraisal that property was purchased by
21 Mr. McAdory in 2010, right?
22 A. That's correct.
23 Q. And he paid $375,000 for it?
24 A. That is correct.
25 Q. So between 2005 and 2010 we know the property

1 appreciated $50,000; is that correct?
2 A. We know two different people paid different amounts for
3 the property. That's true, 50,000.
4 Q. And was the sale between Mr. McAdory and the former
5 tenant an arm's length transaction?
6 A. Mr. McAdory tended to indicate that he thought it was,
7 yes.
8 Q. Do you have any evidence to contest that it was not a
9 fair market -- or an arm's length transaction?
10 A. I don't think he didn't tell the truth. I think he
11 did.
12 Q. Okay. And if you -- that comes to about $33.89 per
13 square foot using the 375 purchase price; is that correct?
14 A. I assume you are taking the purchase price dividing by
15 the square footage of the building; it that what you are
16 doing?
17 Q. I am taking the purchase price divided by the square
18 footage of the land.
19 A. Why would you do that?
20 Q. Well, I get to ask the questions. If you could ---
21 A. I didn't mean to -- I didn't mean that to be ugly. It
22 doesn't make sense. I don't ---
23 Q. Well, we know that he purchased this property to use as
24 a garage; is that correct?
25 A. Yes, I believe that is true.

1 Q. And we know that when he purchased the property it
2 needed to be -- improvements to be utilized as garage; is
3 that correct?
4 A. I think that is why he bought it, yes.
5 Q. Okay. And have you seen these improvements?
6 A. Other than photographs, no.
7 Q. Okay. And have you been to the property since it has
8 been improved?
9 A. Yes.
10 Q. And have you walked inside?
11 A. No, I have not.
12 Q. Okay. And do those improvements in your opinion
13 contribute to the value of the property?
14 A. I can't answer that. I haven't been inside. I have
15 only looked at pictures.
16 Q. That wasn't within the scope of your assignment?
17 A. I started this process before Mr. McAdory even bought
18 the property. I went into the building and measured and
19 walked the site back originally when it was owned by the
20 title company is when I was looking.
21 Q. That's fair enough. But once Mr. McAdory did purchase
22 the property and make the improvements did the County go
23 back and ask you and say Mr. Crider they have changed the
24 use, take a look and see if these improvements add to the
25 value of the property?

1 A. No, the County at that time asked me to update. I am
2 required to update the appraisal to the date of
3 condemnation. And that's what I did.
4 But by then Mr. McAdory I am certain had been contacted
5 and was fully aware of what was going on with the road
6 project so.
7 Q. And you talked about -- let's talk about the after the
8 improvements. Is the highest and best use as an improved as
9 a garage prior to the condemnation?
10 A. Would you -- can I ask you to just to slow down
11 just ---
12 Q. I'm sorry. Prior to the condemnation do you have an
13 opinion as to whether or not the highest and best use of the
14 property as improved is as a garage?
15 A. I again look at it as a commercial building. Anything
16 more specific becomes something over than market value. It
17 actually becomes value in use, which is completely
18 different.
19 Q. But you understand that there were improvements made to
20 this building?
21 A. I heard Mr. McAdory talk about it.
22 Q. And you didn't look into what those improvements were
23 at all?
24 A. I received the list that was referred to as part of the
25 improvements. I heard him talk about the improvements.

1 Q. And in terms -- in terms of the taking, you are of the
2 opinion that the taking does not affect the improvements at
3 all?
4 A. I am of the opinion that the improvements with the cost
5 to cure continue to operate as real estate, yes.
6 Q. Okay. And when you talk about operate as real estate
7 we are talking about specifically as a garage?
8 A. No, I am talking about the market value of the real
9 estate. And that's -- we are not -- it is not a use value.
10 It is a market value.
11 And at the end of the day whether Mr. McAdory stays and
12 operates as a garage, that is his choice. But at the end of
13 the day the property is still generating at least according
14 to two appraisers $1,700 a month.
15 Q. Okay. And what is the market rent for leasing
16 commercial property in that area?
17 A. I've got a couple. Between $8.00 and $9.50. These are
18 just a couple.
19 Q. And this is a 2,000 square foot building?
20 A. No, there are various sizes. This is a six thousand
21 square foot building. It is leasing for $7.28 a square
22 foot. It happens to be a garage.
23 Q. And what do you believe this property would lease for
24 if it was on the open market?
25 A. I don't disagree with the bank appraisal. And he was

1 saying $9.00, I believe. The $1,700 a month works out to
2 about $8.00. When I look at the rentals that I have put
3 together, between eight and nine is not unreasonable.
4 Q. And does $1,700 a month rent make sense when he has a
5 $2,500 mortgage on the property?
6 A. I can't ---
7 Q. I mean he is losing money every month at that rate?
8 A. I can't answer why it's $1,700 a month.
9 Q. Okay.
10 A. I can't account for the mortgage. The mortgage is not
11 a function of the value of the real estate.
12 Q. I understand that. But just looking at simple cost
13 does it make sense for him to rent out a piece of property
14 at $1,700 a month when he has to lose money paying a
15 mortgage of $2,500 a month; he would lose $800 a month?
16 A. I understand that. I can't help the market and what it
17 is.
18 Q. Okay. Now talk about this sign being moved. And tell
19 me. It's unclear where this sign is going to be moved in
20 the after.
21 A. Are you asking me ---
22 Q. Tell me please where is it going to go.
23 A. I heard Mr. McAdory say something I had not thought of
24 maybe of. Maybe it works. Maybe it doesn't. He mentioned
25 cutting down trees back here. I'm assuming he is talking

1 about the palmetto trees. Cutting those down I guess that
2 is a possibility. I don't know.
3 Q. Okay. But if terms of -- I'm sorry. But you talked
4 about in your appraisal putting the sign on the side of the
5 building?
6 A. Right.
7 Q. Which side of the building?
8 A. He talked about that -- he asked me just now. And I
9 said well I -- I didn't even think of that. The sign itself
10 I called the Town of Mount Pleasant -- I did it again. I'm
11 sorry. James Island and asked them could the sign go on the
12 front of the building, could a monument sign of some kind be
13 erected.
14 See, normally signage is not an appraisal issue. They
15 asked me to consider it this time. They call it a moving
16 item. In fact, Peter called it a moving item. It is not --
17 normally not something we are involved in. They just move
18 it.
19 And in this case because there was going to be some
20 difficulty they asked me to contact the Town of James
21 Island. They asked me to find a cost to fix that. And
22 that's what I did.
23 Q. Okay, but it says in your appraisal it says the sign
24 could be placed on the building bow legs wall facade?
25 A. Right, the front area of the building.

1 Q. Okay. Is that as good a position in the after as he
2 had in the before in your opinion?
3 A. Is it as good ---
4 Q. Yes?
5 A. I think it is adequate. I think it serves a purpose.
6 I think it works as far as going on the front. If you put a
7 monument sign -- remember you have still got six feet. You
8 could put a monument sign within that six feet area. All of
9 those things are possible. Mr. McAdory may have the perfect
10 solution in cutting down the palmetto trees.
11 Q. Well, if he cut down the palmetto trees then only
12 people coming towards the city would be able the see the
13 sign?
14 A. That is -- I just -- that is just what he said. I
15 didn't ---
16 Q. And in the before folks could see the sign coming both
17 ways, right?
18 A. That's correct, yes.
19 Q. And signage is a huge asset for businesses; isn't
20 that -- wouldn't you agree with that?
21 A. I think signage is important, yes.
22 Q. And in terms of the parking spaces if I were looking
23 toward the left it says that there is some parking along the
24 side of the building. Is that in the alleyway that you were
25 referring to?

1 A. Yeah, while I was there I saw a couple of people pull
2 up and just stop right there. So yes, they were -- whether
3 it is a good idea or a bad idea, they were stopping there.
4 Q. And after hearing the testimony of the engineer do you
5 still think that there's parking spaces on the side of the
6 building; are you of that opinion?
7 A. I didn't say there were parking spaces. I said people
8 were parking.
9 Q. So that wasn't meant to be a permanent ---
10 A. No, I think he's got two in the front of the building,
11 two defined parking spaces, while I was there, plus all the
12 room in the back that he could park or store.
13 Q. Okay. And you have seen the pictures where he has room
14 for six cars in the front?
15 A. Yeah, I saw.
16 Q. But you made the decision to compensate him for two,
17 lost spaces?
18 A. Yeah, they saw the pictures; two and six. That's
19 not -- there is not six parking spaces there.
20 Q. If there were six parking spaces then he would be
21 entitled to more compensation?
22 A. There's not six parking spaces.
23 Q. I understand that. But hypothetically let's just ask
24 you to make the assumption that there are six spaces.
25 A. Well, then we just created more land. And if we

1 created more land then we probably wouldn't be here because
2 all of the parking wouldn't be taken.
3 Q. Okay. So but we agree all the parking is taken in the
4 front of this property?
5 A. And we agree there is not six parking spaces there.
6 Q. Well, let's just say how much more would you compensate
7 him if there were six spaces?
8 A. I think that is just not a possibility. It is just not
9 six spaces.
10 Q. Can't do it; you couldn't cure that?
11 A. There's not six spaces.
12 Q. Okay. If there were three spaces how much more would
13 you compensate him?
14 A. There's two to three spaces. I think the bank
15 appraisal said there were three. There were three lined
16 spaces, but again they didn't meet the criteria of being
17 eight to nine feet. There were two spaces that appears when
18 I was there. I've got photographs to support that.
19 Q. If there were three spaces how much would you
20 compensate?
21 A. Again, I don't think there's a problem there because in
22 the back where we cured it we created about 900 square feet
23 of parking. And 900 square feet you could probably park --
24 well, just 30 spaces you could park four cars at minimum.
25 Q. And the only place we could put this marking is in the

1 back of property; is that correct?
2 A. That is my opinion, yes.
3 Q. And is your opinion that that place puts him in as good
4 a position in the after as he was in the before?
5 A. As far as the market is concerned -- and the evidence
6 of that is Mr. Mizell's testimony or statement that he could
7 rent it for $1,700 a month compared to the bank appraisal.
8 It is the same numbers so.
9 Q. In terms of use as a garage with the relocation of
10 those parking spaces is that ---
11 THE COURT REPORTER: I'm sorry, Your Honor.
12 MR. MURPHY: I'm sorry.
13 THE COURT: Can you slow down, please.
14 MR. MURPHY: I'm sorry.
15 Q. In terms of use as a garage does the relocation of
16 those spaces to the back of the property place him in the
17 same position as in the before as in -- or in the after
18 rather than as the before?
19 A. I am appraising market value of the real estate. I
20 can't speak directly to the garage. I know it has created
21 an inconvenience. He'll make a decision on what's right.
22 At the end of day he still has $1,700 a month.
23 Q. And is it your opinion that this property can function
24 as a garage in the after?
25 A. I'm not in that business.

1 Q. And Mr. -- you would agree Mr. McAdory would be the
2 best person to evaluate the affect on his business?
3 A. I don't know that that's true either.
4 Q. Okay. Well, if he's not, who else would be?
5 A. The point is obviously he has an interest. I mean I
6 can't say that.
7 Q. And would you agree that this driveway or the alleyway
8 is not wide enough to move -- have two cars pass at the same
9 time?
10 A. I would agree that that is the same in the before and
11 the after.
12 Q. And have you evaluated the problems that this
13 acquisition is causing on the business at all?
14 A. I'm not sure what your question is.
15 Q. Well, have you evaluated -- you heard Mr. McAdory's
16 concerns about this -- the impacts of this condemnation.
17 And my question is have you taken those into consideration
18 at all?
19 A. Yes.
20 Q. Okay. And have you done an analysis of them, a
21 prepared sale analysis showing the difference between the
22 loss of six spaces as opposed to the -- to the property with
23 six spaces in the front and property without any spaces in
24 the front?
25 A. Yeah, I -- we did. That is the whole purpose of --

1 first of all, there's still not six spaces. We are still
2 dealing with two. And you can argue three. I won't argue.
3 And that is how we cured it. So there is an analysis and
4 there is a cure.
5 Q. In terms of use of the property if some type of -- if a
6 new tenant came in with a different use you would agree that
7 there would have to be a substantial investment to upfit
8 that property to the -- to the tenant's intended use?
9 A. No.
10 Q. You don't think so?
11 A. I don't know that at all.
12 Q. Okay.
13 MR. MITCHELL: Objection, Your Honor.
14 THE COURT: Sustained. It is not proper measure of
15 damages. Ladies and gentlemen, you are to disregard the
16 last question and last answer. You are to give it
17 absolutely no consideration in your consideration in your
18 deliberation.
19 Q. Mr. Crider, if the highest and best use in the before
20 was as a garage and it changed as a result of this taking
21 would you have to analyze the impact on the building?
22 A. We speak in terms of highest and best use in terms of
23 more generality of commercial property. So the answer to
24 your question I believe is no. It is still a commercial
25 property before. It is still a commercial property in the

1 after.
2 Q. And you've seen examples of businesses having to
3 relocation as a result of condemnation actions?
4 A. I'm sure, yes.
5 Q. And business -- businesses have had to relocate ---
6 MR. MITCHELL: Objection Your Honor.
7 THE COURT: Basis?
8 MR. MITCHELL: The basis ---
9 THE COURT: Please approach.
10 (WHEREUPON, a bench conference was had as follows:)
11 MR. MITCHELL: Your Honor, they can't go into the fair
12 market value of the property.
13 THE COURT: It is outside the scope of property measure
14 of damages. They have let you go on really for a while with
15 it. I don't know why they haven't objected, but it is not
16 my job to object. But I am not going to instruct that. So
17 you might want to keep it in the appropriate boundary.
18 Sustained. You may proceed.
19 (WHEREUPON, end of bench conference.)
20 THE COURT: Sustained. You may proceed.
21 Q. And let's talk about the County has taken 17 feet of
22 depth off the front of the property?
23 A. That is true.
24 Q. Okay. And let's talk a little bit about these
25 setbacks. You mentioned these side setbacks of 10 feet.

1 And then there is also a front setback of 15; isn't that
2 correct?
3 A. That's correct.
4 Q. Okay. So if the property is vacant for a year then
5 those setbacks would be triggered, correct?
6 A. No, the setbacks are in effect today.
7 Q. Okay. I understand. But it is a nonconforming use,
8 correct?
9 A. Both before and after.
10 Q. Okay. Well, in the before the front setbacks weren't
11 violated?
12 A. That's correct. Only the side.
13 Q. Only the side.
14 A. But you are -- once you are nonconforming, you are
15 nonconforming. There is no kind of nonconforming.
16 Q. And at what time -- at what point would the setbacks
17 would he be forced to come in compliance with these
18 setbacks?
19 A. Well, they are not going to make him move the building.
20 I mean they are not going to -- I mean right now the side
21 they are not going to make him slide it over. Forget ---
22 Q. No, I agree with that. They are not going to make him
23 do it at this point. But if it is vacant for one year, they
24 will make him do that?
25 A. No.

1 Q. You don't believe so?
2 A. No.
3 Q. That was Mr. -- you disagree with Mr. McAdory's
4 testimony?
5 A. Absolutely.
6 THE COURT REPORTER: I'm sorry, Your Honor.
7 THE COURT: Watch pitting, Mr. Murphy. And I need you
8 to slow down so the court reporter can hear you.
9 Q. Now you were hired by the County to appraise a number
10 of tracks on this property -- or on this project. I'm
11 sorry.
12 A. That's correct.
13 Q. And did you appraise all the tracks of this project?
14 A. No.
15 Q. How many did you appraise?
16 A. I would -- I am going to guess probably 30.
17 Q. Thirty. And you charged $2,500 each?
18 A. No.
19 Q. How much did you charge?
20 A. It would be varying amounts.
21 Q. How much did you charge for this appraisal?
22 A. About $2,500.
23 Q. And that was for your initial appraisal?
24 A. I believe so, yes.
25 Q. And that was a flat fee, correct?

1 A. Yes.
2 Q. And you would agree that appraising property is a
3 subjective analysis?
4 A. A subjective analysis based on training and experience
5 and fact.
6 Q. Okay. Well, let's first talk about the three
7 approaches. You have the income approach, the cost
8 approach, and the sales approach. Okay. And ideally under
9 ideal conditions as an appraiser if you applied all three
10 approaches they should all equal the same in terms of value;
11 is that correct?
12 A. I don't necessarily agree with that at all, no. They
13 are done independently. And they are intentionally probably
14 not going to give the same indication of value.
15 Q. But the intent -- the process would be that they would
16 come close to the same value, right?
17 A. Within reason, yeah ---
18 Q. I mean ---
19 A. Dependent -- dependent upon the data and the type of
20 property. I mean I assume we are talking hypothetically
21 again. You know given the amount of data, sometimes data is
22 plentiful. Sometimes it is not. Sometimes those value
23 indications from various approaches are very different.
24 Q. And if they are very different, that would require an
25 additional analysis or ---

1 A. Not necessarily.
2 Q. In term of picking comparable sales, that would be
3 subjective analysis or subjective decision by the appraiser?
4 A. Subjective is a very loose term. It's really more than
5 just guesswork. It truly is based upon opinions. But
6 experience education, knowledge of the market, knowing where
7 to go to find comparables. It is a lot more than just being
8 subjective.
9 Q. And making adjustments to these comparable sales is
10 also subjective, correct?
11 A. Same answer.
12 Q. And the purpose of making adjustments to the sales is
13 to try to make the sales equal with the subject, correct?
14 A. That is true.
15 Q. And the purpose of adjustments is you have to make
16 adjustments because no two pieces of property are alike, are
17 they?
18 A. That's not true. We don't have to adjust every sale.
19 The only sale I needed to adjust was the old McDonald's on
20 Old Folly Road.
21 Q. And there is no hard and fast formula for determining
22 market value of the -- of a subject property, is there?
23 A. Would you repeat, please.
24 Q. Is there any hard and fast formula that would
25 accurately determine market value of the property?

1 A. Yes, I do -- I do believe.
2 Q. What was that formula?
3 A. I think it is the appraisal that I have done. As far
4 as talking about this property I think it accurately depicts
5 the value.
6 Q. So you have applied the sales approach methodology?
7 A. That's correct.
8 Q. And you did not apply the cost approach?
9 A. No.
10 Q. And that was ---
11 A. That was not applicable.
12 Q. And that was another subjective decision you made as an
13 appraiser in this?
14 A. It is not subjective when your peers would agree that a
15 30-year old building or almost 30 years old doesn't need to
16 be calculated to cost new then depreciated. That is an
17 exercise in math.
18 Q. Well, what you have really done is you have applied a
19 methodology to try to predict what the market value is;
20 isn't that a fair statement?
21 A. No, I think it is based a lot more than you are giving
22 credit on of an understanding of the market.
23 Q. Well, Mr. Crider, if you can have two appraisers, two
24 MAI appraisers appraise the exact same property with the
25 exact same data and come up with different values; isn't

1 that true?
2 A. I guess it's possibly. But in this situation the two
3 MAI appraisers, one for the bank and me came up with exactly
4 the same value independent of one another.
5 Q. And in the old days didn't the MAI used to enforce some
6 type of procedure at two MAI ---
7 MR. MITCHELL: Objection, Your Honor.
8 THE COURT: Basis?
9 MR. MITCHELL: He is going back and talking about the
10 old ---
11 THE COURT: Please approach. No speaking objections.
12 (WHEREUPON, bench conference was had as follows:)
13 MR. MITCHELL: He is going back to discuss old
14 methodologies that ---
15 THE COURT: How is this relevant?
16 MR. MURPHY: It goes to show that it is a subjective
17 analysis that of MAI -- they have gone into all of this
18 detail ---
19 THE COURT: What is -- standards ethically they are
20 required to apply not what used to be done. What used to be
21 done implies past and is no longer valid. Give me some
22 reason to change that.
23 MR. MURPHY: There was because they had so many
24 MIA appraisers differ more than ten percent that they
25 changed it and they just stopped doing it.

1 THE COURT: Didn't apply that method in that case, so
2 it is not relevant to the weight of his opinion. Objection
3 sustained.
4 (WHEREUPON, end of bench conference.)
5 Q. Now I'm looking at Page 14 of your appraisal. And this
6 is the comps that you used?
7 A. I think you've got the wrong ....
8 Q. Now this is the initial appraisal. This is not the
9 update.
10 A. I don't have the original appraisal with me. I have
11 got the one that we are talking about today.
12 Q. Well, we will get a copy for you.
13 MR. MITCHELL: Objection, Your Honor.
14 THE COURT: Basis?
15 MR. MITCHELL: Relevance.
16 THE COURT: Please approach.
17 (WHEREUPON, a bench conference was had as follows:)
18 THE COURT: Repeat the question for me, please.
19 MR. MURPHY: The question is did a comparable sales
20 analysis ---
21 THE COURT: I asked you to ask the -- repeat the exact
22 question you just asked.
23 MR. MURPHY: I said is this -- is Page 14 of your
24 appraisal -- I believe -- I didn't even get to anything. It
25 was ....

1 THE COURT: Is this the appraisal he utilized to ---
2 MR. MURPHY: Yes.
3 THE COURT: --- his opinion? What is the objection?
4 MR. MITCHELL: Is this the before appraisal or the
5 after?
6 MR. MURPHY: This is the before.
7 MR. MITCHELL: This is the appraisal that was prior to
8 before for negotiation for settlement. He did an update of
9 the appraisal after the date of value. In condemnation
10 cases the only appraisal that comes in is the one that has
11 the date of value as of the taking. This one does not have
12 a date of value as to the taking.
13 Generally the process is that by statute we have to
14 provide an appraisal to the landowner to be able to
15 negotiate the price. Then if he decides not to agree to
16 that or we can't reach a settlement then we file and that is
17 when we do the appraisal. So he is trying to put this
18 appraisal up there to show the value that he is coming to
19 which is actually in the updated appraisal, not the former
20 appraisal.
21 THE COURT: And I want to hear it again. You can stand
22 down. And I need to hear it.
23 (WHEREUPON, bench conference ends.)
24 THE COURT: Madam Forelady, ladies and gentlemen, we
25 are going to -- this is probably a good time for you all to

1 take a short morning break as well. I have a matter of law
2 I need to take up with the attorneys.
3 During the break please do not discuss the case in any
4 manner whatsoever. And please leave your notepads in your
5 seats.
6 (WHEREUPON, the jury exits the courtroom at 11:20 a.m.)
7 THE COURT: Now what is this that you are seeking? You
8 all may be seated. What is this that you are seeking?
9 MR. MURPHY: I am seeking to question him on his
10 initial appraisal of the property, of the property which
11 includes his comparable sales and adjustments he made, and
12 go through each one of them.
13 And this is how he determines his -- made his initial
14 determination of value. He updated his appraisal and the
15 value didn't change. And I am entitled to cross-examine him
16 on the work he did in this project.
17 THE COURT: You're asking the court to lead
18 to question him about ---
19 MR. MURPHY: No, well, no ---
20 THE COURT: You are entitled based on what the rules of
21 evidence say and how the court rules, correct?
22 MR. MURPHY: Correct, yes.
23 THE COURT: Okay. So let's backtrack.
24 Now, what is your objection?
25 MR. MITCHELL: Your Honor, the appraisal he is

1 referencing it was done as part of a settlement negotiation
2 prior to the filing of the condemnation.
3 THE COURT: Is that done pursuant to statute?
4 MR. MITCHELL: Yes, Your Honor.
5 THE COURT: And what statute are you referring to?
6 MR. MITCHELL: I have a hard time remembering numbers.
7 But that statute say that ---
8 THE COURT: I need the statute number.
9 MR. MITCHELL: Yes, ma'am.
10 MR. FERRARA: Your Honor, Section -- go ahead.
11 MR. MITCHELL: 28-2-70. May I approach, Your Honor?
12 THE COURT: 28-2-70?
13 MR. MITCHELL: Yes, ma'am. And it says ---
14 THE COURT: Wait one moment for me, please.
15 MR. MITCHELL: Yes.
16 THE COURT: Okay. You may continue.
17 MR. MITCHELL: Your Honor, as you see, the statute
18 requires us to provide an appraisal to the landowner. And
19 then the next portion, Part B, says we must negotiate with
20 the landowner based on that appraisal.
21 MR. MURPHY: Judge, the appraisal is required to do to
22 determine the amount of just compensation be tendered to the
23 clerk of court. This is an appraisal that was done pursuant
24 to USPAP.
25 He did an update which did not change his opinion in terms

1 of value. Therefore, I believe I am ---
2 THE COURT: It's a little different though, isn't it;
3 it is similar to the mediation that is required before you
4 proceed with a medical malpractice case. That would not be
5 admissible because it would be settlement negotiations,
6 would it not? And so would this not be within the same sort
7 of parameters as required by statute for the purposes of
8 settlement?
9 MR. MURPHY: I don't believe so, Your Honor, because it
10 is a report that he has -- that has to comply with USPAP.
11 Now if this was just an informal report ---
12 THE COURT: That's not what the statute says though,
13 does it?
14 MR. MURPHY: No.
15 THE COURT: It says it requires a state to do an
16 appraisal prior to before initiating the condemnation to
17 give the landowner notice of it and notice of value such --
18 or the sole purpose of negotiating a settlement prior to the
19 necessity of filing an action, does it not?
20 MR. MURPHY: It does, yes.
21 THE COURT: And it says it is for limited purposes.
22 Says negotiation. What is the difference between that
23 appraisal and this appraisal?
24 MR. MURPHY: It is one comp.
25 THE COURT: Pardon me?

1 MR. MURPHY: One comparable sale.
2 THE COURT: So I guess what's the purpose of asking the
3 question?
4 MR. MURPHY: Well, the purpose is, Judge, it goes
5 into -- and if I -- I'd like to argue before the bench with
6 the white noise on if I may.
7 THE COURT: Pardon?
8 MR. MURPHY: I prefer to argue before the bench with
9 the white noise on.
10 THE COURT: Okay.
11 (WHEREUPON, bench conference was had as follows:)
12 THE COURT: The purpose is he did multiple tract
13 appraisals on this project. He used the same comps on every
14 one one of those tracks.
15 THE COURT: Well, they are all in the same area. They
16 are all comparable ---
17 MR. MURPHY: He made zero adjusts to all - he didn't
18 make any adjustments to any of the comps on any of the
19 tracts. And it goes directly to his credibility as he got
20 in there and said that we have to talk about -- we --
21 appraisers make adjustments and we look at everything and no
22 property is alike. And it is directly relevant on that - on
23 that issue.
24 THE COURT: I don't know if it is, but I am going to
25 hear your questions. Every piece of property is different.

1 But they are all clustered right there in that area. There
2 are no other comparables he would have to use. Where else
3 would he go? If he went further down the highway it would
4 artificially inflate it. Because property down that other
5 end is far more valuable.
6 MR. MURPHY: But in term of -- I am not going to
7 disagree about the comps ---
8 THE COURT: Essentially getting near those huge
9 subdivisions.
10 MR. MURPHY: But ---
11 THE COURT: And they are residential. They are not
12 commercial.
13 MR. MURPHY: But when you get into adjustments, no two
14 properties are alike. You have all different sizes,
15 different uses. And then ---
16 THE COURT: I don't know. That is all commercial
17 property right there in that strip all being used almost for
18 the same purposes.
19 MR. MURPHY: You have different locations.
20 THE COURT: Doesn't matter. It is all commercial
21 property being used for business.
22 MR. MURPHY: But ---
23 THE COURT: They all have the same complaint, ---
24 MR. MURPHY: They make ---
25 THE COURT: --- they are taking our parking.

1 MR. MURPHY: They make a specific adjustment for
2 location. They make specific adjustments for access. There
3 is ---
4 THE COURT: You would have to prove that it is relevant
5 to those other cases or somehow completely the same as your
6 clients and that somehow an adjustment was made to theirs
7 and not theirs for it to become relevant. Because they are
8 not the same. That's almost like Lile evidence in a
9 criminal case.
10 MR. MURPHY: In terms of -- I ---
11 THE COURT: Just because they all -- it is not the same
12 thing. It is apples and oranges really.
13 MR. MURPHY: If it is apples and oranges then he's
14 treated everything like apples. He treated everything the
15 same.
16 THE COURT: I don't know that he did.
17 MR. MURPHY: Well, that's what I am trying to question
18 him about.
19 THE COURT: I'm going hear your questions in camera and
20 then I am going to make a decision about whether they are
21 relevant or not.
22 MR. MITCHELL: Your Honor, may I add?
23 THE COURT: Uh-huh.
24 MR. MITCHELL: I have no issue with him looking at the
25 comps of the date of value paper that is before the court.

1 It is just that appraisal, that initial appraisal that was
2 used for settlement. That is ---
3 THE COURT: You don't have a problem with him asking
4 about the fact that he only did one comparable in this first
5 appraisal, but that he did other comparables in the second
6 appraisal, ---
7 MR. MITCHELL: No, I have ---
8 THE COURT: --- the updated appraisal?
9 MR. MITCHELL: No, I have -- I don't a problem with him
10 asking any questions on the initial appraisal.
11 MR. MURPHY: But the value didn't change.
12 THE COURT: The problem you are going to get into is he
13 is going to say why did you only -- why did you do this
14 first one. Because the state law requires ---
15 MR. MURPHY: I'm not going to ask him that.
16 THE COURT: --- us to negotiate and settle. No, he is
17 entitled to.
18 MR. MURPHY: Right.
19 THE COURT: You can't restrict him.
20 MR. MURPHY: No, I know that.
21 THE COURT: Because then it goes and misleads the jury
22 about the scope of this first appraisal. So it is a tight
23 rope you are walking with it. Because I really -- I am
24 really at a loss as to why it really is relevant. It
25 doesn't hurt your -- it really -- I don't know in the scope

1 of comparables he has provided there is really makes any
2 appreciable difference. It various from a low of 16 to a
3 high of 30-something dollars.
4 MR. MURPHY: I understand that. But what I'm saying is
5 if I could -- it goes directly ---
6 THE COURT: You -- when you start saying well you only
7 did one appraise -- one comparable and this preliminary
8 appraisal and therefore you were not thorough then he gets
9 to ask why did you do it. Because state law requires us to
10 do it and it requires us to negotiate. It is not your
11 prerogative ---
12 MR. MURPHY: No, I know that.
13 THE COURT: --- to limit his cross -- his redirect of
14 his witness because it leaves the jury with some - with a
15 misapprehension as to why he did it the way he did it. They
16 are entitled to rehabilitate their witness and clarify. So
17 then it gets into a Pandora's box that really isn't
18 relevant.
19 MR. MURPHY: But I'm not trying to do anything -- it is
20 the proper procedure to do an appraisal and to do an up
21 update. There is no question about that. And I am not
22 trying to make any issue of that in front of the jury. That
23 is not the intention at all.
24 THE COURT: Okay, then what is your intention?
25 MR. MURPHY: The intention is to talk about what he did

1 in his first appraisal and how -- what he did and compare it
2 to what he did in the second appraisal.
3 And I would like to be able to compare -- show that he
4 he the same comps for all the track that he did initially
5 and that he didn't make any adjustments to it and then in
6 the update he used the exact comps and made only one
7 adjustment.
8 THE COURT: See, I don't know why he does it that way.
9 I would imagine because trying to do more local in the
10 first -- when they are trying to settle it.
11 MR. MURPHY: Well, it didn't change. So there is no --
12 there is nothing to be more liberal about.
13 THE COURT: I don't know. We will hear the questions,
14 and then why don't - well, I want to hear the questions and
15 then we will take a restroom break.
16 (WHEREUPON, end of bench conference.)
17 THE COURT: You may proceed.
18 **EXAMINATION IN CAMERA BY MR. MURPHY OF MR. CRIDER:**
19 Q. All right. Mr. Crider, under the initial appraisal
20 that you performed on this property you used four comparable
21 sales?
22 A. Yes.
23 Q. Okay. And you used the first site was a Bojangles
24 site, I believe?
25 A. Yes, that's true.

1 Q. And you added $15,000 to -- as a condition of sale to
2 this -- this comp?
3 A. That is correct.
4 Q. And that was for demolition of buildings?
5 A. Yes, sir.
6 Q. And in that instance the buildings did not have any
7 value to the property?
8 A. That's correct.
9 Q. And if Bojangles bought Mr. McAdory's site would they
10 also demolish the buildings?
11 A. I would assume.
12 Q. And in that case then the building on Mr. McAdory's
13 site would not have any value?
14 A. That -- that again is an individual purchaser decision,
15 not a specific requirement that they have to.
16 Q. And the second comparable sale, that was the Duncan
17 Donut site?
18 A. Correct.
19 Q. And if Duncan Donuts purchased Mr. McAdory's site would
20 you be of the opinion that they would demolish that
21 building?
22 A. Individual decision.
23 Q. Okay. And do you -- are you familiar with the Duncan
24 Donut franchises at all?
25 A. Yes.

1 Q. Okay. And do they have certain requirements for
2 building design and layout?
3 A. I would agree.
4 Q. And would Mr. McAdory's building conform with that
5 required design and layout?
6 A. Probably not.
7 Q. So they'd have to destroy it?
8 A. Makes sense. But that is an individual decision that
9 they would make.
10 Q. And Comp Number 3, what was that used for?
11 A. Best I recall it was still vacant.
12 Q. Okay. And what was the -- the purchaser had some plan
13 and ---
14 A. I believe it was a shopping center if I am not
15 mistaken.
16 Q. And would a shopping center want to destroy Mr.
17 McAdory's building if they had purchased the site?
18 A. Potentially. I mean it has got some potential for
19 retail.
20 Q. Okay. And in terms of the last sale, CL 4, what was
21 that purchase for?
22 A. That is the Nason site. Oh, I'm sorry. That's --
23 wrong -- again, a retail use.
24 Q. And again you added $15,000 for conditions at sale?
25 A. That is correct.

1 Q. And that is to demolish the three buildings that are on
2 the property?
3 A. That is correct.
4 Q. And in those cases the building have no value to the
5 property in the before?
6 A. That's correct.
7 Q. And if that buyer had purchased Mr. McAdory's site that
8 buyer would most likely demolish the buildings?
9 A. That is an individual decision that they would make. I
10 don't know.
11 Q. It would be either demolish the buildings or expend
12 money to make it fit the intended use?
13 A. For all I know, it would fit their use.
14 Q. And what was the use?
15 A. They were going to put a retail ---
16 Q. Okay.
17 A. --- business.
18 Q. And you used the same comparable sales for all of the
19 appraisals you did -- you initially did on this project?
20 A. No, sir.
21 Q. You didn't? Let me take a look at Track 18. I am
22 looking at Page 16 of your appraisal. Can you see that?
23 Let me just hand it to you. That is an excerpt from your
24 appraisal for Tract 18.
25 A. I will trust that it is. It looks like it -- yes.

1 Q. And are those the same comps that you used for the
2 McAdory site?
3 A. Yes.
4 Q. And you made no adjustments to any of those comps?
5 A. Other than the ones we just discussed.
6 Q. Okay. Okay. But in terms of location, size,
7 topography, zoning and utilities there were no adjustments?
8 A. That's correct.
9 Q. And you didn't make any adjustments to the McAdory
10 tracts?
11 A. No, that ---
12 Q. What ---
13 A. I mean I was consistent.
14 THE COURT REPORTER: Your Honor, I'm sorry.
15 THE COURT: You are going to have to slow down. She is
16 having a lot of difficulty.
17 MR. MURPHY: I apologize.
18 Q. And for Track 23 that was an appraisal that you
19 prepared as well?
20 A. Yes, all the same answers.
21 Q. Okay. The same number of tracks?
22 A. Correct.
23 Q. No adjustments to anything?
24 A. Correct, other than the ones we had already discussed.
25 Q. Okay. And then I'll hand you Track 20 which was an

1 appraisal you did as well?
2 A. Correct.
3 Q. And you used the exact same comps as Mr. McAdory?
4 A. Correct.
5 Q. And again, you did not make any adjustments other than
6 conditions of sale?
7 A. That is correct.
8 Q. And that's all I have, Your Honor.
9 THE COURT: Any exception to that line of questioning?
10 MR. MITCHELL: No, Your Honor, I don't think he got to
11 the area that he was originally going to where he was trying
12 to compare sales six to a sales four ---
13 THE COURT: Well, my question is do you have any
14 exception to him ---
15 MR. MITCHELL: No, Your Honor.
16 THE COURT: --- asking these questions?
17 MR. MITCHELL: No, Your Honor.
18 THE COURT: Okay. Then we will take a short restroom
19 break and we will resume. You may also go to the restroom
20 if you would like. Just please don't discuss your testimony
21 with anyone.
22 MR. MURPHY: In terms -- Judge, I just want to make
23 clear with Brad, that would be the line of questioning that
24 I would have. I would also just have one question ---
25 THE COURT: You need to ask all the questions you

1 intend to ask ---
2 MR. MURPHY: Okay.
3 THE COURT: --- if you know he has an objection.
4 Proceed.
5 **EXAMINATION IN CAMERA BY MR. MURPHY OF MR. CRIDER:**
6 Q. And Mr. Crider, you did an update to this appraisal?
7 A. That is correct.
8 Q. And in that update you exchanged sale number four with
9 sale number six?
10 A. That is correct.
11 Q. And other than changing the data valuation and changing
12 that comp sale there were no other changes?
13 A. Not that I can recite off the top of my head. I
14 honestly don't recall.
15 MR. MURPHY: Then that's it, Your Honor.
16 THE COURT: Any exception to that question?
17 MR. MITCHELL: No, Your Honor.
18 THE COURT: All right. Let's take a quick restroom
19 break.
20 (WHEREUPON, break was taken.)
21 THE COURT: Are you ready to proceed?
22 MR. MITCHELL: Yes, Your Honor.
23 MR. MURPHY: Yes, Your Honor.
24 THE COURT: Please get the jury.
25 (WHEREUPON, the jury enters the courtroom at approximately

1 11:47 a.m.)
2 THE CLERK: The jurors are present, Your Honor.
3 THE COURT: Thank you. You may be seated. Ladies and
4 gentlemen, I hope you enjoyed your break. We are now
5 resuming the witness's testimony. You may proceed.
6 **RESUME CROSS-EXAMINATION BY MR. MURPHY OF MR. CRIDER:**
7 Q. Mr. Crider, I neglected to ask you whether or not you
8 believed the improvements have -- or add value to the
9 property; do you have an opinion as to whether or not the
10 improvements may add value to the property?
11 A. I do believe they can, yes.
12 Q. Okay. And tell me why you believe they can.
13 A. I think they can be put to a use that would generate a
14 return that is sufficient to make them viable for a
15 commercial use.
16 Q. And I'm going to hand up a copy of your deposition. If
17 you could open that, please.
18 THE COURT: No, the court opens it. If there's a
19 question you need to ask, you need to follow.
20 MR. MURPHY: I would hand up a sealed deposition, Your
21 Honor.
22 (WHEREUPON, deposition opened by the court.)
23 Q. Mr. Crider, I would direct your attention Page 6,
24 Line 10. Or, I'm sorry. Line 11. And I ask you in your
25 opinion do the improvements add any value to the property.

1 And your answer?
2 A. I believe -- I believe they could, yes.
3 Q. And then I ask, tell me what factors you would need to
4 determine whether or not they could add value. And your
5 answer?
6 A. I would like a copy of the lease. I again like --
7 would like to go inside the renovated building. Obviously
8 it looks like the defendants have done a good deal of work
9 or the landlord, I'm not sure whom; but somebody put a good
10 deal of money into it.
11 So at least they believe there is some value in those
12 improvements. And I think a physical inspection, a review
13 of the lease, would go to me being able to answer that
14 question.
15 Q. And did the court -- the County ever get you a copy of
16 that lease you requested?
17 A. I was provided with the terms of that lease, yes.
18 Q. You never actually saw the lease?
19 A. I don't recall seeing it. It's possible I've got it in
20 here somewhere.
21 Q. All right. Let's go on to your initial appraisal. And
22 in your initial appraisal you used four comparable sales to
23 determine value?
24 A. Yes, sir.
25 Q. And the first comparable sale was the Bojangles

1 property?
2 A. That is correct.
3 Q. And you added $15,000 as a condition of sale to that
4 property?
5 A. That is correct.
6 Q. And the reason being is that there was a building that
7 had to be demolished as a result of this purchase?
8 A. That is correct. There were actually six duplex
9 residential prop- -- buildings on the property.
10 Q. And in that instance the buildings didn't add value to
11 the property?
12 A. That is true.
13 Q. And if Bojangles had purchased the McAdory site the
14 building would most likely meet the same fate?
15 A. An individual purchaser determines whether or not an
16 existing building does or doesn't add value to them.
17 Q. Okay. And Bojangles is a franchise that would have
18 certain standards for a building layout and appearance?
19 A. That's true.
20 Q. And do you believe that those standards could be
21 upfitted into Mr. McAdory's building?
22 A. I would say that is very outstanding.
23 Q. And the next comp you used was a Duncan Donuts?
24 A. That's true.
25 Q. And again if Duncan Donuts purchased the McAdory site

1 they would most likely demolish the building?
2 A. Kind of the same answer. Purchasers determine what
3 they are going do with the property. And it's likely that
4 Duncan's would do something different.
5 Q. And same questions with regard to Duncan Donut's being
6 a franchise, they have a certain standard?
7 A. I would agree.
8 Q. Okay. And if they had purchased the McAdory site they
9 wouldn't be paying -- the building would not have value; is
10 that a fair assumption?
11 A. If they had purchased it, yeah, they would probably do
12 something different with it.
13 Q. And the third comp you used was a vacant site? Or that
14 would have been the James Island, Maybank Highway site?
15 A. That's correct. I believe so.
16 Q. And that was purchased for a shopping center?
17 A. I believe that to be true.
18 Q. Okay. And if those purchasers had purchased the
19 McAdory site they would most likely demolish the building as
20 well?
21 A. I don't know that to be true. Again, it is going to be
22 a retail use. But an individual purchaser determines
23 whether existing improvements do or don't contribute to
24 that.
25 Q. And the fourth comp, that was on Folly Road as well?

1 A. That's correct.
2 Q. And that you did a $15 -- or $15,000 adjustment as
3 conditions of sale?
4 A. That's correct.
5 Q. Because there are three buildings that need to be
6 demolished on that?
7 A. That is correct.
8 Q. And in that case those buildings add no value to the
9 property?
10 A. That is correct.
11 Q. And in arriving -- reconciling these numbers you
12 determined the land value equaled $25 per square foot?
13 A. Yes, sir.
14 Q. And that is actually less than the average of all those
15 comps?
16 A. I didn't do it that way. I don't know.
17 Q. Well, how far did you arrive -- well, let me ask you
18 this: How did you arrive at $25 dollars a comp per square
19 foot when you had two $34's per square foot and going down
20 to 20 and 21?
21 A. Would you put the grid down just a second for me,
22 please.
23 Q. And if it helps I can ---
24 A. Yeah, that would be much better.
25 (WHEREUPON, document presented to the witness.)

1 A. The selection of comparable sales is where the
2 experience, education, and training of an appraiser comes
3 from. The reconciliation of a range of values is where the
4 opinion of the appraiser comes from.
5 In looking at these sales we have a low of about $18
6 and some change, 18.76, to a high of about $34.70. We have
7 got one 21 and then another at 34. We tended to indicate
8 somewhere around $25 as square foot as being reasonable. It
9 is not about averaging sales. That's just not the way we
10 come up with conclusions.
11 Q. And that would be another subjective decision that you
12 would make when appraising a property?
13 A. I don't know of anyone that averages sales. I think
14 that is just not a proper process at all.
15 Q. But you could have found above the average?
16 A. I guess if someone chose that. In this case $25 was --
17 was right.
18 Q. And you appraised number of subjects on this project?
19 A. Yes, sir.
20 Q. Okay. And you used the same exact comparable sales on
21 those assignments as you used on McAdory?
22 A. I believe we discussed that -- and again, it is my best
23 estimate. Around 30 or 40, something like that, other
24 properties. And no, I did not use the same for every one of
25 those.

1 Q. And let's just turn back to the McAdory track. You
2 made zero adjustment for location and access to the
3 comparable sales?
4 A. That's correct.
5 Q. You made zero adjustments for size of utility?
6 A. That's correct.
7 Q. You made zero adjustments for topography and shape?
8 A. Correct.
9 Q. You made zero adjustments for zoning ---
10 A. That's ---
11 Q. --- and you made zero adjustments for utilities,
12 correct?
13 A. That is all correct.
14 Q. And I am putting up here Track 18 which was an
15 assignment of yours as part of this project?
16 A. Yes, sir.
17 Q. And in this assignment you used the exact same comps as
18 you used in the McAdory track?
19 A. Yes, sir. And obvious the reason is it is virtually
20 next door. And look at the size. It's similar.
21 Q. And you made zero adjustments for location, size,
22 topography, zoning and utilities?
23 A. That's consistent. That's correct.
24 Q. And you also prepared an appraisal for Track 23?
25 A. I think two doors down, yes, sir.

1 Q. And again, you used the exact same comps?
2 A. Yes, sir, it was also .478 in acres. That made sense.
3 We are again being consistent.
4 Q. And you made zero adjustments?
5 A. Correct.
6 Q. And then you also appraised Track 20 as part of this
7 assign- -- project?
8 A. That's correct.
9 Q. And you used the exact same comps?
10 A. That's correct.
11 Q. And you made zero adjustments?
12 A. Same thing, yes.
13 Q. And you then updated your appraisal in this case to the
14 date of valuation?
15 A. That is correct.
16 Q. And in doing so you changed one comp; you exchanged
17 Comp 6 with Comp 4 -- or, I'm sorry, Comp 4 with Comp 6?
18 A. I -- yes, I took out one of the sales and added a more
19 recent sale.
20 Q. And you also obviously changed the date of valuation?
21 A. That is correct.
22 Q. And you charged $2,500 for this initial appraisal?
23 A. I believe something like that.
24 Q. And you charged $2,500 for the update?
25 A. I don't know that to be true.

1 Q. Do you have your invoice with you?
2 A. No, sir.
3 Q. And how much are you charging an hour for your
4 testimony here?
5 A. It is $300 an hour.
6 Q. Okay. And as part of this when did you arrive in
7 Charleston?
8 A. Yesterday morning probably around nine o'clock.
9 Q. Okay. How many hours did you bill for yesterday?
10 A. I haven't yet. I'll go back and add up everything.
11 Everything gets capped. I don't think it's right to charge
12 any more than -- I charge about $2,000 a day. So it will
13 get capped at that.
14 Q. Okay. So $2,000. And do you expect to charge $2,000
15 for today?
16 A. It is possible, yes, sir.
17 MR. MURPHY: One moment, Your Honor.
18 THE COURT: Uh huh.
19 Q. Just to be clear about adjustments, no two pieces of
20 property are alike if -- even if they are identical size,
21 shape, dimensions, or anything, because they are not in the
22 same location; is that fair?
23 A. I would agree in a literal sense no two properties are
24 alike. The question is can the market -- or does the market
25 differentiate between any difference.

1 Q. And adjustments the whole purpose of adjustment is to
2 try to make the subject -- the comparable sales similar with
3 the subject?
4 A. That is correct. As far as the market can distinguish
5 differences. That's correct.
6 MR. MURPHY: That's all I have. Thank you.
7 THE COURT: Any redirect examination?
8 MR. MITCHELL: Your Honor, I have nothing -- no other
9 questions.
10 THE COURT: Any objection to the witness being excused?
11 MR. MURPHY: None, Your Honor.
12 MR. MITCHELL: I have no objection, Your Honor.
13 THE COURT: Sir, you are excused.
14 THE COURT: Anything further from the County?
15 MR. MITCHELL: No, Your Honor.
16 THE COURT: Does the County rest?
17 MR. FERRARA: Yes, Your Honor.
18 THE COURT: Reserve motions. Any rebuttal -- anything
19 further from the landowner?
20 MR. MURPHY: Nothing Your Honor.
21 THE COURT: Madam Forelady, ladies and gentlemen, I
22 have some very brief matters of law to take up with the
23 attorneys. During this break please do not discuss the case
24 among yourselves. Please leave your notepads in your seats.
25 I'm investigating right now the possibilities of

1 bringing in lunch for you. There are some other things we
2 may be doing in connection with this case, the decision of
3 which I will make shortly. And then I will update you as to
4 how we will be proceeding for the remainder of the
5 afternoon.
6 If you would go with the bailiffs, please.
7 (WHEREUPON, juror exits courtroom 12:00 a.m.)
8 THE COURT: You may be seated. Are there any motions?
9 MR. MURPHY: The landowner would just renew the same
10 motions we made at the close of -- of our case.
11 THE COURT: Any motions from the County?
12 MR. FERRARA: And Charleston County would also renew
13 its motion in limine as to any references to Lex-Tech
14 being ---
15 THE COURT: Let me -- bear with me one moment.
16 (Pause.)
17 THE COURT: Okay. Yes, sir.
18 MR. FERRARA: We just want to go ahead and just for the
19 record renew our motion that we made in limine regarding
20 this problematic issue we feel that the jury may encounter
21 viewing the owner as Mr. McAdory and Lex-Tech Automotive
22 L.L.C. and then these improvements ---
23 THE COURT: I think that goes to the scope of argument
24 and the scope of the introduction of evidence which you are
25 required to make a contemporaneous objection. Although we

1 discussed it in limine you know that is not a final ruling.
2 MR. FERRARA: I understand, Your Honor.
3 THE COURT: And every time there has been a
4 contemporaneous objection I have ruled on it.
5 MR. FERRARA: Okay.
6 THE COURT: I think the law is very clear. Lex-Tech is
7 not a party therefore they cannot recover. So there cannot
8 be any argument as to their losses so to speak.
9 Now, as regards improvements, ---
10 MR. FERRARA: That's what ---
11 THE COURT: --- or dollar for dollar improvements ---
12 MR. FERRARA: That is my next argument.
13 THE COURT: To the extent that that has been elicited
14 from testimony is at the landowner's own peril because black
15 letter precedent doesn't support it, and I am not going to
16 instruct it.
17 MR. FERRARA: Well, that's -- that's ---
18 THE COURT: Those are matters I think for a charge
19 conference, not for a directed verdict.
20 MR. FERRARA: Thank you, Your Honor.
21 THE COURT: You are welcome. Anything further from the
22 landowner?
23 MR. MURPHY: Nothing, Your Honor.
24 THE COURT: Okay. What I think we are going to do --
25 does the County have any objection to us going to view the

1 property?
2 MR. FERRARA: Your Honor, if that is ---
3 THE COURT: That is ---
4 MR. FERRARA: --- what Your Honor wants to do and the
5 jury wants to do.
6 THE COURT: Well, I need to know if you have any
7 exceptions.
8 MR. FERRARA: No ---
9 THE COURT: It is not a jury decision. They made a
10 motion. I need to know if you ---
11 MR. FERRARA: No except- ---
12 THE COURT: --- except it.
13 MR. FERRARA: None from County, Your Honor.
14 THE COURT: Well, I guess we are going on a field trip.
15 Okay. The van is here, correct?
16 THE DEPUTY: To my knowledge, yes, ma'am.
17 THE COURT: Can you double check that for me right
18 quick.
19 THE DEPUTY: Yes, ma'am.
20 THE COURT: We are going to then load up the vans and
21 go -- I think we are going to hit a little bit of lunch
22 traffic going over the Connector. We are going to then load
23 up the vans and go over to the property.
24 I have -- Don is now taking the jury's lunch orders. I
25 anticipate that when we return they will then be able to eat

1 their lunch and then we will resume and you all will be able
2 to grab yourselves something to eat and then we will resume
3 with closing argument and instruction.
4 Any exception from the landowner?
5 MR. MURPHY: No, I just want to understand. We are
6 going to go eat lunch -- have the jurors each lunch here and
7 then go in the van?
8 THE COURT: No, we are going in the van right now.
9 MR. MURPHY: Go right now. Okay. No problem.
10 MR. FERRARA: Your Honor, just to be clear, the
11 attorneys are staying here; we are not going out with ---
12 THE COURT: It is up to you. I'm going.
13 MR. MURPHY: And I'm going.
14 MR. FERRARA: Your Honor ---
15 THE COURT: Generally you go. I mean it is up to you.
16 If y'all want to stay, that's fine. There is not going to
17 be any discussion or anything.
18 MR. FERRARA: Are we going to drive by the building
19 or ---
20 THE COURT: No, we are going there and look.
21 MR. FERRARA: Are we going to go inside the building to
22 look?
23 THE COURT: We are going to look at the land.
24 MR. FERRARA: Pardon me?
25 THE COURT: We are going to look at the land. That is

1 what is being condemned.
2 MR. FERRARA: But are we going inside the building?
3 THE COURT: No, we are ---
4 MR. FERRARA: Okay, just ---
5 THE COURT: --- going to look at the property.
6 MR. FERRARA: --- the land that is being condemned?
7 THE COURT: Uh-huh. They are conducting business
8 inside the business. We are not going in there.
9 THE DEPUTY: The van is ready.
10 THE COURT: Okey doke.
11 THE DEPUTY: When would you to use it?
12 THE COURT: Where is it at?
13 THE DEPUTY: Downstairs.
14 THE COURT: Downstairs in the Salley Court or
15 downstairs in my garage?
16 THE DEPUTY: It is out on Meeting Street outside the
17 courtyard, Your Honor.
18 THE COURT: Oh, so we can just walk them outside in the
19 sunshine. Perfect. Tell them we can leave it right there
20 and we will get the bailiff's assistance and y'all's
21 assistance to load up as soon as we do lunch order.
22 MR. MURPHY: Your Honor.
23 THE COURT: Yes, sir.
24 MR. MURPHY: Your Honor, just -- so I have an
25 understanding in terms of when the folks -- the jury visits

1 the property that they be allowed to walk in the back -- or
2 just walk the entire property?
3 THE COURT: They can walk the entire property. We are
4 going to go in the back to see where the parking would be.
5 Because that is one -- that is some of the testimony about
6 curing the deficits to the property ---
7 MR. MURPHY: And I would also ---
8 THE COURT: --- as a result of the condemnation.
9 MR. MURPHY: I would also request they be allowed to go
10 inside the office area ---
11 THE COURT: For what purpose?
12 MR. MURPHY: There has been testimony that the
13 improvements don't have value in the afterwards.
14 THE COURT: He doesn't get compensated for improvements
15 to the building. He gets compensated for the fair market
16 value and the diminution in value. I am not going to fudge
17 that issue. I am not going to mislead this jury. I have
18 been liberal and I let those pictures in.
19 MR. MURPHY: Thank ---
20 THE COURT: And that will suffice.
21 MR. MURPHY: Thank you, Your Honor.
22 THE COURT: They are conducting business in that
23 building, and we are not going to parade through it. We
24 will look at the front. We will look at the back. We will
25 look at the periphery. There will be no discussion. There

1 will be no demonstrations. We will come back. We will have
2 lunch. We may have charge conference before we go while
3 they are loading them up and then we will proceed.
4 MR. MURPHY: Thank you, Your Honor.
5 THE COURT: You're welcome.
6 MR. MURPHY: If the court would note my exception.
7 THE COURT: It was noted when you made it.
8 MR. MURPHY: Thank you.
9 THE COURT: The court's ruling stands. Because I am
10 being liberal in going.
11 MR. MURPHY: Thank you, Your Honor.
12 THE COURT: I'm being liberal in visiting. Because
13 there really is no necessity on visit. Because I don't
14 think -- we don't have any ambiguity about what the property
15 looks like in its previous or current condition.
16 MR. FERRARA: Can we ask ---
17 THE COURT: Yes, sir.
18 MR. FERRARA: --- the landowner's counsel to reconsider
19 his request to visit the property?
20 MR. MURPHY: No.
21 (WHEREUPON, break to confer regarding transportation.)
22 (WHEREUPON, Court's Exhibit Number 1, Condemnor Charge, was
23 marked.)
24 (WHEREUPON, Court's Exhibit Number 2, Landowner's Request,
25 was marked.)

1 (WHEREUPON, Court's Exhibit Number 3, Landowner's Request,
2 was marked.)
3 THE COURT: We are not in recess. We are not in
4 recess. I still have to instruct the jury before we go
5 anywhere. And I am still going to do charge conference,
6 because it is going to take them a minute to load them up in
7 the van.
8 MR. MURPHY: I apologize, Your Honor.
9 THE COURT: You all can take your seats. I will give
10 the jury a general instruction regarding their
11 responsibility and my responsibility as well as a general
12 description of what a condemnation or eminent domain case
13 is.
14 What I need to know is what is the exact acreage of the
15 property that is being condemned.
16 MR. MURPHY: Your Honor, it is 12,087 square foot.
17 THE COURT: This is an acreage that I believe was 0.03
18 or something.
19 MS. WALSH: 0.030.
20 THE COURT: Is that accurate from the County? Because
21 that is what I wrote down, but I wanted to make sure that I
22 was accurate. Three hundredths of an acre?
23 MR. FERRARA: That's correct, Your Honor.
24 THE COURT: Is the 0.030 accurate?
25 MR. FERRARA: That is correct, Your Honor.

1 THE COURT: Okay.
2 MR. FERRARA: One thousand two-hundred-eighty-seven
3 square feet or zero point zero three zero acres is what the
4 Charleston County acquired.
5 THE COURT: Again, I will give them a general
6 instruction regarding their responsibility and my
7 responsibilities.
8 Well, first I will give them a general description of
9 what a condemnation case is, the amount of property that is
10 in fact being condemned.
11 I will give them a general instruction regarding their
12 responsibility and my responsibilities, how they are to
13 judge witness credibility and believability.
14 Give them a general instruction regarding expert
15 witness testimony. I will give them general -- I gave -- I
16 will give them a general instruction regarding their
17 responsibility to follow the law as I instruct it as well as
18 the general instruction on the burden of proof.
19 I will give them a general instruction regarding just
20 compensation which includes all of the language required by
21 statute and case law as well as fair market value.
22 I will give them a general instruction regarding the
23 fair and impartial and regarding the unanimity of their
24 verdict. And I will utilize the verdict form that I will
25 allow you all to review shortly.

1 As regards the request to charge from landowner Number
2 8 the court will use its standard instruction on credibility
3 as well as 9 on expert witnesses and standard instruction on
4 just compensation which is the request 10.
5 MS. WALSH: Thank you, Your Honor.
6 THE COURT: You're welcome. As regards to condemnnor's
7 request, Charleston Number 1, fair market value the court
8 will use standard instruction as well as Number 2 which is
9 highest and best use as well as Number 3 which is expert
10 witnesses and Number 4 which is burden of proof. Number 5
11 is inapplicable factually to this case as well as Number 6
12 and Number 7 as well as Number 8.
13 And Number 9 is an as a matter of law for the court and
14 of legal procedure to be utilized; therefore, it is not
15 appropriately instructed to the jury.
16 Number 10 is cumulative on damages and the court will
17 use the standard instruction. I may consider Number 11, but
18 I think that is already included in my standard
19 instructions.
20 MR. MURPHY: Also, Your Honor, there hasn't been any
21 testimony on loss of business at all.
22 THE COURT: Yeah, your client did mention it
23 tangentially. And I may need to address it. I don't want
24 the jury left with the impression that he is entitled to
25 some loss of use of business as element of actual or special

1 damage.
2 In a condemnation case special damages is defined as
3 the devaluation to the remainder of the property, not
4 anything else. So I don't want the jury left with the
5 impression that somehow he lost business or his testimony
6 regarding that he had to buy a new building for the
7 relocation of his business and somehow he needs to be
8 compensated for that. Because he's not.
9 So I may -- but I think my instructions may encompass
10 it. I just need to go back and read them again to make
11 sure. But if not, I am not certain that I would actually
12 use Number 11, but I might use some other language that
13 would address that issue.
14 MR. MURPHY: And, Your Honor, we have -- have also sent
15 in charges one threw ---
16 THE COURT: I'm going to go through all of them.
17 MR. MURPHY: Okay.
18 THE COURT: Landowner's request Number 1, actual value,
19 the court is going to use its standard instruction as well
20 as Number 2, Number 3, Number 4, Number 5, and Number 6 as
21 well as number -- 7 is really an inappropriate comment on
22 the facts. That is as a matter of law for the court, not a
23 matter for a jury.
24 It is a matter of law that a landowner may testify as
25 to the value of its own use of property. The court will

1 give a standard instruction on the believability,
2 credibility of the witnesses and how the jury is to weigh
3 testimony.
4 But it is not appropriate to instruct a jury that a
5 landowner can testify as to value of his own property.
6 It's -- it's -- that's not -- that would be me somehow
7 really actually giving more credibility to his testimony or
8 me making an inappropriate comment on his -- on the factual
9 nature of his testimony.
10 It is a matter of law for the court as to whether a
11 layperson can testify regarding the value of their property.
12 And I have already allowed it, and it has already been
13 introduced into evidence. And the court's standard
14 instruction more appropriately addresses that issue. I am
15 not going to comment on one person's testimony versus
16 another.
17 The request for instruction will be marked as court's
18 exhibits. Have that one marked too. If you will give it
19 back to me so I can look at Number 11 again. Are there any
20 exceptions to the charges proposed from the landowner?
21 MR. MURPHY: Yes, Your Honor, we would ask ---
22 THE COURT: You may proceed.
23 MR. MURPHY: We would ask you to charge condemnor's
24 Request Number 3 which is the before and after ---
25 THE COURT: I have included it in the standard

1 instructions.
2 MR. MURPHY: Oh, okay. Then it is -- all right. Very
3 well. And then also we just note exception to charge
4 Number 7 which you addressed allowing the landowner to
5 testify on his behalf.
6 THE COURT: I have already indicated that it is a
7 matter of law for this court to determine, not for the jury.
8 He has been allowed to testify regarding the value of his
9 property. I am not going to comment or give any more weight
10 to the credibility to be afforded to his testimony. It
11 would be an inappropriate charge on the facts.
12 Any exception from the County?
13 MR. FERRARA: None, Your Honor.
14 THE COURT: If you all could approach for me, please,
15 and look at the verdict form.
16 (WHEREUPON break was had.)
17 THE COURT: I need the jury.
18 (WHEREUPON, break awaiting jury.)
19 (WHEREUPON, the jury enters the courtroom at approximately
20 12:22 p.m.)
21 THE BAILIFF: All jurors present, Your Honor.
22 THE COURT: Thank you. You may be seated. Ladies and
23 gentlemen, we are going on a little field trip. We are
24 going to visit the property.
25 There's a van downstairs, so we will transport you in.

1 We anticipate that once we have visited the property and
2 returned, your lunch will be here and you will be able to
3 eat. And I know it is a little probably beyond most
4 people's lunchtime, and we appreciate your indulgence. If
5 you need a snack on the way, let know and I will have the
6 bailiffs accommodate you.
7 We will be travelling in a 15-passenger van. A bailiff
8 will be accompanying you as well as the deputy who will be
9 driving the van. And then again we will come back and have
10 lunch. And after that I anticipate we will have closing
11 arguments and the court's instructions after which you will
12 be allowed to deliberate regarding this case.
13 I instruct you that while you are on the way to and
14 from the scene and at the scene you are not to discuss the
15 case in any manner whatsoever among yourselves or with
16 anyone else.
17 You are not to ask any questions of the lawyer or of
18 the attorneys or of the court or of the deputies or anyone
19 else regarding the facts and circumstances of this case.
20 Of course if you are in some distress or, you know,
21 average, ordinary conference is not precluded. But you are
22 not to have any discussion in any manner whatsoever
23 regarding the case.
24 The purpose of going on a site visit is not to have any
25 deliberative process during the visit. It is not for the

1 purposes of presentation of evidence from either party. And
2 it is not for under any circumstances for the purposes of
3 trying to perform any type of experiments or otherwise, if
4 that makes sense, or any kind of demonstrations or otherwise
5 regarding the property. It is for the sole purpose of you
6 being able to view the property which is the subject of the
7 condemnation in this case.
8 If you have any questions or concerns while we are at
9 the property, you are to ask those only of me and then I
10 will make the attorneys aware of any questions and we will
11 place those on the record when we return to the courthouse.
12 Now I'm going to ask that you return -- you are going
13 to -- if you need to get your pocketbooks or anything, you
14 will be allowed to get those. And then the bailiffs are
15 going to take you down.
16 The van is in Meeting Street Courtyard which is -- I am
17 trying to think my orientation. Because I get turned around
18 when I am in the building. It is in that -- it is right by
19 where those pylons are, right? Out in front?
20 THE DEPUTY: It will be on Meeting Street side, Your
21 Honor.
22 THE COURT: Meeting Street side.
23 THE DEPUTY: Directly outside of the County Office
24 Building.
25 THE COURT: All right. You mean outside the -- where

1 we are on the garage, by Hibernia?
2 THE DEPUTY: Once you come out through the front door
3 and just go out through the -- by the stairway there.
4 THE COURT: Oh, right there. But you -- are you going
5 to help me with the bailiffs to take them where they need to
6 go, or ---
7 THE DEPUTY: Yes, ma'am.
8 THE COURT: --- are you going with me?
9 THE DEPUTY: Yes, ma'am.
10 THE COURT: Okay. All right. I am directionally
11 challenged, so they will help you find out where you are
12 suppose to go. They are going -- we are going to load you
13 to the van. We are going to head over to James Island. And
14 then leave we will leave the property together. We will
15 return to the courthouse. And at that time I anticipate
16 your lunch will be here. Or and if not, shortly within the
17 time of us returning. And we will go from there.
18 We appreciate -- you can leave your notepads here at
19 the courthouse in your seats as well as the exhibit that you
20 have of the property. All right. I will see you all
21 shortly.
22 No phones. If they have phones they will have to be
23 off. They can take their phones with them if they want to,
24 but they have to be off.
25 (WHEREUPON, the jury leaves the courtroom at 12:25 p.m.)

1 THE COURT: You may be seated. Any exception to the
2 court's instructions regarding visiting the scene, from the
3 landowner?
4 MR. MURPHY: None, Your Honor.
5 THE COURT: From the County?
6 MR. FERRARA: None, from Charleston County, Your Honor.
7 Thank you.
8 THE COURT: All right. Let's see.
9 MR. MURPHY: Just for timing, Your Honor, when the
10 jurors come back will it be necessary -- were you -- I don't
11 anticipate you pulling back in the jury room. I would
12 assume you just give them lunch and then resume at some
13 point?
14 THE COURT: Yeah.
15 MR. MURPHY: Okay. And what time -- well, I guess it
16 depends on how long it takes.
17 THE COURT: It depends on how long it takes. And just
18 for your planning purposes, it usually takes them about 30
19 minutes to eat or 20 minutes. So you might want to have
20 somebody bring you something because you are not going to
21 have time to go out.
22 MR. MURPHY: All right. Thank you.
23 THE COURT: You might have somebody from you office
24 bring you a sandwich or something so you can eat it in one
25 of the conference rooms while the jury is eating. Or you

1 can always run through a drive-thru I guess on your way
2 back.
3 MR. FERRARA: Your Honor, may I approach?
4 THE COURT: Yes. See you all shortly.
5 (WHEREUPON, the trial of this case was on break for the jury
6 to view the scene and eat lunch.)
7 THE COURT: You may be seated. Is the landowner ready
8 to proceed?
9 MR. MURPHY: We are, Your Honor.
10 THE COURT: Is the County ready to proceed?
11 MR. MITCHELL: Yes, we are, Your Honor.
12 MR. FERRARA: Yes, ma'am, Your Honor.
13 THE COURT: That's okay. I'm rather used to it. All
14 right. Please bring in the jury, Mr. Rivers.
15 (WHEREUPON, the jury enters the courtroom at approximately
16 2:35 p.m.)
17 THE BAILIFF: All jurors are present, Your Honor.
18 THE COURT: Thank you. You may be seated.
19 Madam Forelady, ladies and gentlemen, both the
20 landowner and the County have rested their case. The next
21 part of the process is closing argument and the court's
22 instruction on the law -- instructions on the law.
23 I would ask that you give the attorneys your undivided
24 attention. The landowner may proceed.
25 MR. MURPHY: Thank you, Your Honor.

1 THE COURT: You are welcome.
2 (WHEREUPON, closing arguments were heard but are not a part
3 of this partial transcript.)
4 (Following closing arguments:)
5 THE COURT: Does anyone need go to the restroom or is
6 everyone comfortable?
7 (WHEREUPON, there was no response.)
8 THE COURT: Why don't y'all stand up and stretch a
9 little bit.
10 (Pause.)
11 THE COURT: Madam Forelady and members of the jury, you
12 have heard the evidence and the arguments of both parties.
13 I will now explain to you the law which applies to this
14 case.
15 As I have explained, this is a condemnation case
16 arising under the law of what we call eminent domain.
17 Eminent domain means that the State has the right to take
18 private property for public use. This action is called
19 condemning the property.
20 In this case Charleston County has condemned a certain
21 tract of land in order to widen a roadway. A parcel
22 consisting of .25 acres or 11,064 square feet is owned by
23 Mr. Walter G. - I knew I was going do hesitate ---
24 MR. MURPHY: McAdory.
25 THE COURT: McAdory. I did not. Because I did not

1 want to mispronounce it. And I apologize. McAdory out of
2 which 287 square foot or .030 which computes to 3/100's of
3 an acre is subject to condemnation. The State must pay for
4 the .030 acre piece of property which has been taken for
5 public use.
6 Both parties in this case agree that payment must be
7 made for the property. However, they disagree as to how
8 much should be paid.
9 You are not to be concerned with whether the State had
10 a right to take the property or whether the roadwork should
11 be constructed on this particular piece of property. You
12 must only decide the amount the landowner should be paid in
13 order to be adequately compensated or paid for the property.
14 This amount is called just compensation. You, the
15 jury, must determine the amount which would represent just
16 compensation to the landowner. The values which you must
17 apply are those which reflect the worth of the property on
18 July 11th, 2012, the date of the taking and not the value of
19 the property today.
20 Under our constitution and code of laws only you, the
21 jury, can make the findings of fact in this case. I am not
22 permitted to indicate to you how I may feel about the
23 testimony and evidence which has been presented. The
24 constitution of our state does not allow me to have an
25 opinion about the facts of a case.

1 And throughout this trial it is been my intention to be
2 fair and impartial toward each of the parties involved as
3 well as their attorneys.
4 To determine the facts in this case, ladies and
5 gentlemen, you will have to evaluate the credibility which
6 is simply a legal term meaning the believability of each
7 witness who has testified.
8 Some of the things you may consider as you decide
9 whether to believe a witness's testimony about a particular
10 matter include: what was the manner and appearance of the
11 witness who testified, was he or she straightforward or
12 hesitant in answering, was the testimony of a witness
13 consistent or inconsistent, how did the witness come to know
14 the facts that he or she testified to or what was his or her
15 ability to know these facts, is there some reason that a
16 witness would want to give testimony which would help or
17 hurt one side or the other, in order words, was the witness
18 biased or prejudiced, and was the testimony of a witness
19 strengthened or weakened by other testimony or evidence.
20 Ladies and gentlemen, you can believe as much or as
21 little of each witness's testimony as you think proper. You
22 may believe the testimony of a single witness against that
23 of many witnesses or just the opposite. Of course you do
24 not determine the truth merely by counting the number of
25 witnesses presented by each side.

1 Throughout this process, ladies and gentlemen, you have
2 but one objective, to seek the truth regardless of its
3 source. Our rules of evidence ordinarily do not permit
4 witnesses to testify to opinions or conclusions.
5 An exception to this rule exists for witnesses we call
6 expert witnesses, a witness who by their education, training
7 and experience has become an expert in some art, science or
8 profession, may give an opinion as to the subject the
9 witness claims to be an expert in and may also give the
10 reasons for that opinion.
11 You should consider any expert opinion given in this
12 case like any other evidence. Give it the weight you think
13 it deserves.
14 If you decide that an expert witness's opinion is not
15 based on sufficient education, training and experience or if
16 you decide that the reasons given in support of the opinion
17 are not sound or that the opinion is outweighed by other
18 evidence you may disregard the opinion entirely.
19 An expert witness's testimony is to be given no greater
20 weight than that of other witnesses simply because the
21 witness is an expert. And you do not have to accept an
22 expert's opinion even though it is uncontradicted.
23 The same constitution and laws which designate and make
24 you the finders of the facts as I just explained make me the
25 instructor of the law. You must accept the law as I

1 instruct it. If I am wrong there is another place and time
2 for that error to be corrected.
3 But for this case you must apply the law as I instruct
4 it. And this means, ladies and gentlemen, that you should
5 not be concerned with what you may think the law should be
6 but only with what I instruct you the law actually is.
7 Members of the jury, the landowner in this case has the
8 burden of proving the amount of just compensation by the
9 greater weight or the preponderance of the evidence.
10 What we mean by the greater weight of the evidence can
11 be illustrated by imaginary -- by imagining a traditional
12 set of scales.
13 When the case begins the scales are even. After all
14 the evidence has been presented if the scales should remain
15 evenly balance or if they should tip even slightly in favor
16 of the County of Charleston then the landowner will have
17 failed to have met his burden of proof and he will not be
18 entitled to recover on that particular issue.
19 If on the other hand the scales should tip even
20 slightly in favor of the landowner then he will have met his
21 burden of proof and your verdict would be for the landowner
22 on that particular issue in dispute.
23 By a preponderance or greater weight of the evidence we
24 mean evidence which as a whole shows that the fact or facts
25 sought to be proven are more probably than not.

1 Of course there is no way to weigh evidence except
2 through the exercise of your good common sense and judgment.
3 It is entirely a mental process. And the evidence you
4 should give the most weight to is that evidence which
5 convinces you of its truth regardless of from whom or what
6 source it has come.
7 As I have just explained to you, the issue you are to
8 determine in this case involves just compensation to the
9 landowner for the property which has been taken from him.
10 Just compensation is based upon the most advantageous
11 and profitable use of the property on the date it was
12 acquired by the County.
13 Just compensation refers to the full and perfect
14 equivalent in money to be exchanged for the taken property
15 so that the owner of the property shall be in as good a
16 position financially as she -- he or she was in before their
17 land was taken.
18 In other words, an owner who receives just compensation
19 will be no richer and no poorer than he was before the
20 property was taken.
21 An alternative -- alternative way to determine just
22 compensation is to determine the difference in the value of
23 the land before and after the taking.
24 You may also consider the cost to cure the damage to
25 the remaining property.

1 Compensation for damages to the remaining property of
2 the landowner must be limited to the decreased market value
3 of the property resulting there from.
4 To award just compensation you will first have to
5 determine the fair market value of the condemned property
6 and the property which remained after the taking.
7 Fair market value is the price a willing buyer would
8 pay and a willing seller would accept in the ordinary course
9 of business when neither person is being compelled to act.
10 Fair market value is not sentimental value or the price
11 the property would sell for under special or extraordinary
12 circumstances.
13 In determining fair market value you must not consider
14 speculative or imagine -- or imaginary damages or
15 enhancements to the property, as well as a loss of business
16 is not an independent element of damages in this case.
17 You must confine your consideration only to those
18 elements which actually affect the property's market value.
19 A landowner is only entitled to compensation for loss of
20 access to an existing highway to the extent that such a loss
21 adversely affects the fair market value of the property.
22 Fair market value is the actual value of the land at
23 the time of the taking. Just compensation is based upon the
24 most advantageous and profitable use of the property on the
25 date it was acquired by the County.

1 In estimating its value you may consider all of the
2 uses which could have been made of the land and which would
3 have had some affect upon its market value.
4 You are permitted to consider comparable sales of the
5 property to determine the fair market value of the taken
6 property.
7 A comparable sale is a sale which is not too remote in
8 time and which has some basis for comparison. The sale does
9 not have to be in the same location, but it should be
10 reasonably comparable.
11 Ladies and gentlemen, you have been selected as fair
12 and impartial jurors sworn to impartially try the facts of
13 this case. And when you comply with your oath to do so then
14 no one will have the right to criticize your verdict and you
15 will have fully discharged your duty as jurors in this case.
16 You should not be influenced by opinions or expressions
17 of opinions if any which you may have heard outside of the
18 evidence of this case, but you are to decide this case
19 according to the testimony that you've heard from the lips
20 of the sworn witnesses along with the other evidence that
21 has been introduced.
22 Madam Forelady and members of the jury, in
23 consideration of your verdict in this case in reaching a
24 verdict your verdict must be a unanimous one which mean that
25 all 12 of you must agree in order to reach a verdict.

1 Your verdict cannot be based on sympathy, passion,
2 prejudice, emotion or any other consideration not found in
3 the evidence of this case.
4 When we say unanimous we mean the verdict of all 12 of
5 you. That is it must be the verdict of each and every one
6 of you, a verdict that will speak the truth and do justice
7 to both the landowner and the State.
8 Madam Forelady, I have prepared -- Madam Forelady and
9 ladies and gentlemen of the jury, I have prepared for you a
10 verdict form upon which you are to write your verdict once
11 you reach a unanimous verdict.
12 And it reads as follows: We the jury unanimously find
13 for the landowner in the amount of blank dollars as just
14 compensation. Once the jury has reached a verdict it is
15 your responsibilities to write out that verdict in numeric
16 form as well as in alphabetic form.
17 In order words -- I hope that was clear. I always
18 wonder if it is when I say it. But I think you understand
19 what I meant.
20 And once the jury has reach a verdict you are to sign
21 and date the form and knock on the door and advise the
22 bailiffs that you have reached a verdict.
23 Again, ladies and gentlemen, your verdict must be a
24 unanimous one which means that all 12 of you must agree in
25 order to reach a verdict.

1 If you have any questions during deliberations they
2 will need to be written out. And that would be written out
3 by the foreperson. And you will follow the same procedure.
4 Write out any questions. Knock on the door and advise the
5 jury that -- advise the bailiffs that you have a question
6 which they will in turn give to me.
7 Ladies and gentlemen, I need to advise you that if you
8 have any questions during deliberations please know that
9 there will be a delay in our response. And that is because
10 there's a procedure that I have to follow in answering any
11 questions that you may have.
12 Also I neglected to explain this earlier. The
13 foreperson is merely an administrative function. That
14 person does not have any greater vote or voice than you do.
15 It is a purely random process that the court employs in
16 selecting a foreperson, and it is that person's
17 responsibility to fill out the verdict form and to write out
18 any questions the jury may have during deliberations.
19 Again, it is purely random and that person does not have any
20 greater vote or voice than you do.
21 Ladies and gentlemen, I am going ask that you return to
22 your jury room. But do not yet begin your deliberations. I
23 may have to -- there are some matters of law I need to take
24 up with the attorneys that may require clarification of an
25 instruction or further instruction.

1 However, if there is no further instruction we will
2 send in the verdict form to you along with the exhibits and
3 your notebooks. And at that time you will be allowed to
4 begin your deliberations. If you would go with the
5 bailiffs, please.
6 (WHEREUPON, the jury leaves the courtroom at 3:25 p.m.)
7 THE COURT: You may be seated. Does the court reporter
8 have all of the exhibits?
9 THE COURT REPORTER: Yes, ma'am.
10 THE COURT: Are there any exceptions from the
11 landowner?
12 MR. MURPHY: No exceptions, Your Honor.
13 THE COURT: From the State -- I mean the County. I'm
14 sorry.
15 MR. FERRARA: None, Your Honor. Thank you.
16 THE COURT: Can y'all make sure all of the evidence is
17 in place so that we can send that -- you can go ahead and
18 start getting the notebooks, Mr. Rivers.
19 (Pause for review of exhibits.)
20 THE COURT: Sir, we want to thank you for your time and
21 your attention to this case. We know being an alternate is
22 thankless. However, I think I have good news for you
23 because I can excuse you for the week.
24 ALTERNATE JUROR: All right.
25 THE COURT: We will mail your check to you. If you

1 need a work excuse you can get that downstairs on the first
2 floor on the circuit court side of the clerk's office. And
3 any of the deputy clerks can give you one. You are welcome
4 to discuss this case, but I would ask that you not do it
5 until after Friday after the entire panel is excused.
6 Because sometimes ---
7 ALTERNATE JUROR: How am I going to know the verdict?
8 THE COURT: Huh?
9 ALTERNATE JUROR: How am I going to know the verdict?
10 THE COURT: You can stay if you want.
11 ALTERNATE JUROR: In the court -- in the deliberating
12 room or ---
13 THE COURT: We will keep you -- no, we will keep you in
14 the multipurpose room and you can ---
15 ALTERNATE JUROR: Someone will tell me.
16 THE COURT: Or we'll give you a call.
17 ALTERNATE JUROR: Okay.
18 THE COURT: Lots of times lawyers will contact you
19 because they just want to know how they can do things
20 better. And so you are welcome to talk about that with them
21 if you like. By the same token if someone should go beyond
22 your comfort level, please let us know so we can protect
23 your privacy. But we thank you ---
24 ALTERNATE JUROR: Yes, ma'am.
25 THE COURT: --- for your willingness to serve. Have a

1 wonderful day. You're excused.
2 (Whereupon the alternate leaves the courtroom at
3 approximately 3:30 p.m.)
4 (Whereupon, the exhibits and verdict form was given to the
5 jury and they were told to begin for their deliberations.)
6 THE COURT: We'll be at ease until the jury gives us
7 further instructions.
8 (Break.)
9 THE COURT: We have a question from the jury: Could we
10 have the copy of law relative to just compensation. And my
11 response to them will be, ladies and gentlemen, our
12 procedures do not allow for a copy of the jury charge,
13 slash, instructions to be given to you; if there is a
14 specific instruction like you would like given again or the
15 entire instruction, please advise us and I will accommodate
16 your request immediately.
17 Is there any exception to that response, from the
18 landowner?
19 MS. WALSH: No, Your Honor.
20 THE COURT: From the County?
21 MR. FERRARA: None, Your Honor.
22 THE COURT: That will be stapled to their original
23 response and it will be kept as a court's exhibit.
24 (WHEREUPON, Court's Exhibit 4 was marked and made a part of
25 the record.)

1 MS. WALSH: Thank you, Your Honor.
2 THE COURT: You are welcome. We will await further
3 instructions.
4 (Break.)
5 THE COURT: The jury asked for a calculator, so I had
6 Don give them one. Is there any exception from the
7 landowner?
8 MS. WALSH: None.
9 THE COURT: From the County?
10 MR. FERRARA: None, Your Honor.
11 THE COURT: Have the note marked as a court's exhibit.
12 (WHEREUPON, Court's Exhibit Number 5 was marked and made a
13 part of the record).
14 (Break.)
15 (WHEREUPON, resumed 5:45 p.m.)
16 THE COURT: The jury has sent a note. And that note
17 reads as follows: Could someone read the just compensation
18 portion of the South Carolina law pertaining to this case.
19 Signed by the foreperson.
20 And in response I will reinstruct them just
21 compensation which also encompasses fair market value, a
22 portion of the instruction.
23 Is there any exception from the landowner?
24 MR. MURPHY: Which charge is that, Your Honor?
25 THE COURT: Just compensation which deals with how you

1 calculate the cost of compensating the landowner. Which is
2 what the jury has requested.
3 MR. MURPHY: And you propose to read the full charge
4 or ---
5 THE COURT: No, I'm just going to read that portion
6 that deals with ---
7 MR. MURPHY: Okay.
8 THE COURT: --- just compensation and fair market
9 value.
10 MR. MURPHY: Judge, I'm sorry. But I would just
11 request that if you could just read that portion. Because
12 I'm looking at ---
13 MS. WALSH: I am looking ---
14 MR. MURPHY: --- charge ---
15 MS. WALSH: Can't argue if we don't have the standard
16 in front of us. So I -- you just said just compensation
17 which includes fair market value is that all ---
18 THE COURT: Just compensation I interpret their note to
19 mean how do we calculate the value of what -- how do we
20 determine damages, how do we determine how the landowner is
21 compensated for this property.
22 So I am going to read everything that deals with how
23 you calculate, how you come to the figure of compensating
24 him for his property.
25 MR. MURPHY: Okay. And that would include damages to

1 the remainder as well, Your Honor?
2 THE COURT: Oh, yes.
3 MR. MURPHY: Okay. That is what I was asking.
4 THE COURT: Any exception from the landowner?
5 MR. MURPHY: No, none from the landowner.
6 THE COURT: Any exception from the County?
7 MR. FERRARA: None from the County, Your Honor.
8 THE COURT: That's the third note.
9 (WHEREUPON, Court's Exhibit Number 6 was marked and made a
10 part of the record.
11 THE COURT: If you'd get jury for me, please.
12 (WHEREUPON, the jury enters the courtroom at approximately
13 5:50 p.m.)
14 THE COURT: You may be seated. Madam Forelady and
15 ladies and gentlemen -- ladies and gentlemen, in response to
16 your note the court reinstructs you as follows:
17 As I've explained to you the issue you are to determine
18 in this case involves just compensation to the landowner for
19 the property which was taken from him, just compensation
20 based upon the most advantageous and profitable use of the
21 property on the date it was acquired by the County.
22 Just compensation refers to the full and perfect
23 equivalent in money to be exchanged for the taken property
24 so that the owner of the property shall be in as good of a
25 position financially as he was before his land was taken.

1 In other words, an owner who receives just compensation
2 will be no richer and no poorer than he was before the
3 property was taken.
4 An alternative way to determine just compensation is to
5 determine the difference in the value of the land before and
6 after the taking. You may also consider the cost to cure
7 the damage to the remaining property.
8 Just compensation for damages to the remaining property
9 of the landowner must be limited to the decreased market
10 value of the property resulting there from.
11 To award just compensation you will have -- you will
12 first have to determine the fair market value of the
13 condemned property and the property which remained after the
14 taking.
15 Fair market value is the price a willing buyer would
16 pay and a willing seller would accept in the ordinary course
17 of business when neither person is being compelled to act.
18 Fair market value is not sentimental value or the price
19 the property would sell for under special or extraordinary
20 circumstances.
21 In determining fair market value you must not consider
22 speculative or imaginary damages or enhancements to the
23 property or loss of business. And loss of business is not
24 an independent element of damages in this case.
25 You must confine your consideration only to those

1 elements which actually affect the property's market value.
2 A landowner is only entitled to compensation for loss of
3 access to existing highways to the extent that such a loss
4 adversely affects the fair market value of the property.
5 Fair market value is the actual value of the land at the
6 time of the taking.
7 In estimating its value you may consider all of the
8 uses which could have been made of the land and which would
9 have had some affect upon its market value.
10 You are permitted to consider comparable sales of
11 property to determine the fair market value of the taken
12 property.
13 A comparable sale is a sale which is not too remote in
14 time and which has some basis for comparison. The sale does
15 not have to be in the same location, but it should be
16 reasonably comparable.
17 That concludes the additional instruction. If you need
18 anything further, please let us know and we will accommodate
19 your request immediately.
20 (WHEREUPON, the jury leaves the courtroom at 5:55 p.m.)
21 THE COURT: You may be seated. Any exceptions from the
22 landowner?
23 MR. MURPHY: None, Your Honor.
24 THE COURT: From the County.
25 MR. FERRARA: None, Your Honor.

1 THE COURT: Okay. We will await further instructions
2 from the jury.
3 MS. WALSH: Thank you, Your Honor.
4 THE COURT: You're welcome.
5 (WHEREUPON, court was recessed while awaiting verdict from
6 the jury.)
7 THE COURT: We have a verdict. Is there anything
8 before we bring in the jury, from the landowner?
9 MR. MURPHY: None, Your Honor.
10 THE COURT: From the County?
11 MR. FERRARA: No, Your Honor.
12 THE COURT: They should be right behind me, Mr. Rivers.
13 (WHEREUPON, the jury enters the courtroom at approximately
14 6:57 p.m.)
15 THE BAILIFF: All jurors are present, Your Honor.
16 THE COURT: Thank you. Madam Forelady, has the jury
17 reached a verdict?
18 MADAM FORELADY: We have, Your Honor.
19 THE COURT: If you would give the verdict form to the
20 bailiff for me, please.
21 (Complied.)
22 THE COURT: Thank you. If you would publish the
23 verdict. Thank you, sir.
24 THE CLERK: In the Court of Common Pleas for the Ninth
25 Judicial Circuit, Case Number 2012-CP-10-4511, State of

1 South Carolina, County of Charleston; County of Charleston
2 condemner versus Walter G. McAdory, landowner.
3 We the jury unanimously find for the landowner in the
4 amount of $63,158 as just compensation. Signed -- excuse
5 me, Mary Bartshe, foreperson of the jury, dated October 17,
6 2013.
7 Madam foreperson, ladies and gentlemen of the jury, if
8 this is your verdict please signify by raising your right
9 hand.
10 THE CLERK: Thank you. You may put them down.
11 THE BAILIFF: Your Honor, let the record reflect all
12 jurors raised their right hands.
13 THE COURT: Thank you. Is there any request to poll
14 the jury ---
15 MR. MURPHY: Yes, we would request it.
16 THE COURT: --- from the landowner?
17 THE CLERK: Ladies and gentlemen, I am going to ask you
18 each two questions. First, is this your verdict; and
19 second, if this still your verdict. Please just answer
20 accordingly. And when I call your name if you would raise
21 your hand so I know who I am speaking with.
22 (WHEREUPON, the jury was polled.)
23 THE CLERK: Your Honor, the jury has been polled. The
24 verdict stands.
25 THE COURT: Madam Forelady, ladies and gentlemen, we

1 thank you for your time and your attention to this case. We
2 know that jury service is thankless and basically at $10 a
3 day you certainly are donating your time to us for the
4 purposes of acting as the fact finders in cases.
5 Our system is the only system of its kind in the world
6 where 12 ordinary people sit as fact finders and then apply
7 really what is at best and often times a very complicated
8 set of laws to those facts and render verdicts.
9 Charleston County is probably -- it is not probably; it
10 is one of the busiest circuits in the state probably running
11 neck and neck with Columbia which is the capital and
12 Greenville County which is in the Upstate.
13 South Carolina has the largest case filings only second
14 to another state in the nation at over 5,000 case filings
15 per judge. We have 49 circuit judges. We just added some
16 new circuit judges the other day, so I don't know what
17 number that brings it up to. I think it brought it up to
18 either 51 or 52 judges who rotate throughout the state and
19 hear cases.
20 Just to give you some point of reference, we often all
21 attend what is called continuing legal education and we
22 often go to a place called the National Judicial College
23 where the majority of judges across the country come to be
24 educated about how to do our jobs better and to learn about
25 different topics.

1 And in the course of that, you make friend with other
2 judges across the country I have made friends again across
3 the country. Two of my friends sit on what is called
4 Homicide Court in Philadelphia. For the City of
5 Philadelphia they have nine judges whose only job is to hear
6 murder around capital cases. Nine. All they hear all year
7 are murder cases.
8 South Carolina has 51 judges that hear everything from
9 capital cases down to anything civil above $7,500 in
10 addition to appellate jurisdiction over the magistrate's
11 court and the probate court. And we all hear all of those
12 cases. And even with that we still dispose of cases faster
13 than most states with an average of eighteen months, where a
14 lot of states take about five years to dispose of most of
15 their cases.
16 So I give you those statistics so that you will know
17 how very valuable you are to us. Of the 52 weeks of the
18 year Charleston County probably holds jury trials 46 of
19 those weeks. We only don't have court during chambers where
20 we go to our conferences and when we have holidays,
21 Christmas, Thanksgiving. And then we have a couple of other
22 chambers weeks spread out through the year. But on average
23 we have two civil courts operating.
24 This week I think we have three -- four -- five. And
25 we have two nonjury courts operating as well, which I

1 neglected to mention. We hear cases nonjury where we act as
2 the fact finders which are motions and often nonjury trials.
3 But we also have two criminal courts that are operating at
4 the same time. So as you can well imagine, we generally
5 have those four courts with the exception of very few weeks
6 like next -- well, next week we will have criminal court.
7 This week I don't think we have any criminal court.
8 But needless to say without going through all that, we
9 have a very, very heavy, busy docket. And the majority of
10 that are jury trials.
11 And of course we could not be able to perform that
12 function without you all being willing really to give us
13 your time to do that. So I hope you know how very valuable
14 you are to us and to the system.
15 You are excused for the week. This is the last case
16 that we will try. You are welcome to discuss this case if
17 you would like. Often times lawyers will contact you so
18 that they can get feedback as to how they can do their jobs
19 better, how they can present issues better.
20 And, you know, lawyers we are kind of stuck in a way we
21 think and so it helps often times to talk to a layperson to
22 see how they perceive the issues in a case, how they
23 perceive how a case was tried.
24 So you should not be surprised if any of the lawyers
25 might contact you to get some feedback. By the same token

1 you are not required to speak with anyone. And if a
2 conversation should go beyond your comfort level please
3 notify the clerk's office so that we can take the
4 appropriate action to protect your privacy.
5 If you would like someone to escort you to the garage
6 because it is getting a little dark, we can have one of the
7 deputies escort you to make sure that your safety is insured
8 until you reach your vehicle. So if you want to be
9 escorted, please let the bailiffs know and we will take care
10 of that.
11 Your work excuses as well as your checks will be mailed
12 to you. If you absolutely need a work excuse tonight we
13 will provide that to you before you leave. Again, just let
14 the bailiffs know if you need that. Otherwise we will mail
15 them to you. Thank you so very much for your service. And
16 you are excused with the court's profound thanks.
17 I will hear post-trial motions in just a moment.
18 (WHEREUPON, the jury leaves the courtroom at 7:04 p.m.)
19 THE COURT: All right. Are there any post-trial
20 motions, from the landowner?
21 MR. MURPHY: Your Honor, we would request ten days to
22 file post-trial motions ---
23 THE COURT: I hear post-trial motions at the conclusion
24 of trial. It is never going to be more fresh to me than it
25 is right now. I am going into a heavy criminal docket. And

1 I have three terms of post-trial -- of PCR's that I have to
2 do orders for so ---
3 MR. MURPHY: Very well, Your Honor.
4 THE COURT: No time like the present.
5 MR. MURPHY: We would move for a motion for a new trial
6 pursuant to Rule 59E as the verdict was the result of
7 passion, caprice or prejudice.
8 Specifically there was the court's failure to allow
9 landowner to testify about the monetary value of the
10 improvements and/or investments into the building which were
11 affixed to the property. Number two, the failure to allow
12 the jurors to enter inside the building during the jury
13 visit. Number three, the verdict is not supported by the
14 evidence. And number four, the failure to charge the jury
15 on the landowner being able to testify about the value of
16 his property.
17 THE COURT: Would the County like to respond?
18 MR. FERRARA: Yes, Your Honor. The County would like
19 Your Honor to deny the landowner's motion pursuant to Rule
20 59 for a new trial because all charges to the jury were
21 correct in that improvement costs are in direct
22 contravention to law because damages are calculated using
23 the diminution in addition of the property and already
24 account for some other use of the building on a property.
25 And your instruction not to consider the improvements

1 extended to not allowing them to go into the building to
2 look at the improvements.
3 THE COURT: And actually I would say for benefit of the
4 record, while I did that, they still went into the back of
5 the building.
6 MR. FERRARA: That is correct, Your Honor.
7 THE COURT: They saw while we were on the property
8 every single one of them went in there and looked in. So I
9 don't think you can really claim any prejudice from that.
10 When we went to the back of the building all of them went.
11 They looked inside the shop, and they saw it.
12 So even though I said they weren't going to go, when we
13 got there I just went ahead and let them do it because I
14 just wasn't going to interrupt -- I felt to interject myself
15 at that point would have had a more disruptive influence.
16 And so they went into the building. They went into the back
17 of the building. They saw the lifts. They went inside.
18 They all went beyond the threshold of the back of the
19 building. And they all went inside and they looked at it.
20 MR. FERRARA: Further, Your Honor, the definition of
21 just compensation, South Carolina, just compensation does
22 not include damages associated with improvements to the
23 property. That is not a component of damages that are
24 compensable. Improvements are not a compensable element of
25 fair market value in determining just compensation.

1 Improvement value like you said earlier does not increase
2 the fair market value. It has no relation to fair market
3 value. I believe you instructed the jury on that. I think
4 your jury instruction was specific.
5 I think you said fair market value -- well, this
6 goes to the highest and best use includes all uses
7 upon land -- well, strike that last cite about the
8 instruction.
9 But nevertheless improvements are not a component of
10 damages that are compensable when you calculate the just
11 compensation. And I would have to go through many other
12 reasons why I think that you ought to deny the motion.
13 I think that the judgment is based on accepted
14 methodology of Crider which was an appraisal done in
15 conformance with the uniform standards of the professional
16 appraisal practice.
17 The testimony of the landowner was certainly confusing.
18 He asked them to find for him in the amount of $150,000
19 claiming on one hand that the building had no value but then
20 again the building had value because it could be rented for
21 $1,700 a month.
22 So I don't see how that that creates some passion of
23 prejudice to the landowner. It was his argument. It
24 certainly was a confusing argument to me. I think the jury
25 disregarded it and relied on Crider's appraisal. So you

1 should deny the motion for a new trial.
2 THE COURT: Thank you, sir. The court has considered
3 the post-trial motions and would find for the record that
4 the judgment of the jury it is not -- is not the result of
5 passion, caprice, prejudice or some other influence outside
6 of the evidence.
7 The court would also find that consistent with case law
8 if there is any evidence to sustain the factual findings
9 implicit in a jury's verdict the court must affirm and
10 uphold that verdict.
11 There is no evidence of corruption or other improper
12 motive in the jury's verdict. And the verdict does not
13 shock the conscience of the court. The court finds that
14 there is no basis for a new trial and therefore the motion
15 is denied.
16 Now to address each of the grounds more specifically,
17 the landowner was allowed to testify regarding the value of
18 the property, his estimation of what he felt the property
19 was worth.
20 And while he was not allowed to give specific figures,
21 partly because it was speculative, some of the expenses he
22 was talking about were made after the taking.
23 And I forget the rest of the grounds that I found at
24 the time of the contemporaneous motion and when I ruled
25 contemporaneously on the matter.

1 But there is absolutely no support in case law in
2 determining evaluation of this property to have allowed the
3 jury to have taken into consideration the monetary value of
4 enhancements.
5 Frankly the court was quite liberal in allowing
6 testimony regarding enhancements. Because the case law is
7 very clear that in determining fair market value
8 enhancements to the property cannot be considered. And the
9 court stands by its earlier ruling that enhancements are not
10 a part of the elements of damages nor is it a part of how
11 fair market value is computed.
12 In addition to that, the case law very clearly states
13 that special damages would be those damages to the remainder
14 of the property, that being either the cost to upfit or to
15 bring the property into -- to bring it into the place where
16 it could continue to be used which is the testimony
17 regarding the signage as well as the parking or the
18 diminution in value to the remainder.
19 And certainly he was allowed to testify at length
20 regarding each of those issues. And so the court stands by
21 its earlier ruling.
22 I've already made my observations regarding the jury
23 entering the building. And they did enter the building
24 during the visit. And they did look at length to the back
25 of the building, the lifts, the two doors and otherwise.

1 But even if I had not allowed them to go into the
2 building, how the building looks still falls within the
3 parameters of enhancements. And he is not entitled to be
4 compensated regarding enhancements.
5 And he is only entitled to the fair market value of his
6 property, the cost to cure the damage to the remaining
7 property, and any diminution in value to the remainder of
8 his property, subtracting of course any enhancements made by
9 the County. And there was no testimony that the property
10 was enhanced in any way pursuant to the statute.
11 Each party amply argued and advocated their own
12 formulas as to how the jury should consider just
13 compensation with reach of them articulating what they
14 believed to be how the difference in value before and after
15 the taking should have been calculated. And so and evidence
16 on both of those postures was allowed to be presented to the
17 jury.
18 There's still in my estimation no basis for the court
19 to instruct the jury regarding the landowner's ability to
20 testify regarding his lay opinion of his -- or the valuation
21 of his property. That's a legal issue instructing the court
22 that a layperson can testify as to the value of their own
23 property.
24 (Disruptive outside noise.)
25 THE COURT: Please close that door.

1 Because generally and under general evidentiary
2 principals ---
3 THE COURT: I need you to close that door, please.
4 Under general evidentiary principals a layperson would
5 not be entitled to testify to something that required
6 specialized knowledge, training, and experience such as the
7 valuation of property.
8 But there are exceptions to that rule, that being
9 condemnation proceedings and probably some other situations
10 where generally the precedent is a person can testify as to
11 what they believe the valuation of their property to be.
12 But that's a legal issue for consideration by the court. It
13 is not something that should be instructed to the jury.
14 And the language that was cited from the case deals
15 with instructions to the court regarding the ability to
16 allow that type of testimony.
17 But even looking at that issue in the light most
18 favorable or even let's just say for argument's sake that
19 the landowner was correct. I very clearly instructed the
20 jury regarding how they are to judge witness credibility and
21 believability that clearly is within their prerogative to
22 give testimony the weight they think it should have and
23 their prerogative as fact finders.
24 And in addition to that, the expert instruction is very
25 clear and it has an equalizing affect. It basically says

1 that while an expert has specialized training his testimony
2 is not considered -- not to be given any greater weight than
3 any other witness. You can disregard it if you want to if
4 you think it is outweighed by other testimony in evidence,
5 if you think it is not supported by the appropriate
6 training, education, and experience; if you think it's
7 contrary to the weight of the evidence.
8 In other words, it is the great equalizer. It simply
9 says yeah we allow experts as an exception to testify to
10 opinions and conclusions but you don't have to accept them
11 even if they are uncontradicted.
12 So in light of that instruction as a whole, that being
13 the charge on credibility and believability of witnesses,
14 how far they are to judge the testimony of witnesses, along
15 with expert witness testimony, I can ascertain no reason
16 why -- for the jury to have been instructed regarding --
17 regarding that.
18 And the way the instruction was structured in my
19 estimation would have been an impermissible comment
20 regarding the factual nature of the landowner's testimony.
21 I think I covered everything that was raised. And
22 based on that, the motion for a new trial is denied. And
23 it's very clear from the figure that was rendered by the
24 jury there is a difference of -- and I just wrote it down.
25 I think it is eleven thousand dollars and some change. I

1 apologize. This late hour I am not -- I am not good at math
2 at the best of circumstances. So it is seven o'clock. I am
3 definitely challenging my math skills.
4 It was a difference of $11,488. So it is very clear to
5 me that the jury did not wholeheartedly accept the testimony
6 of the expert. Because if they did, their verdict would
7 have been $51,670.
8 So they clearly took into account some -- they would
9 have to have taken into account other factors that the
10 landowner testified to or they would not have given him a
11 verdict almost $12,000 above that which the County says the
12 property is worth.
13 So clearly there's factual testimony to support their
14 finding. And I can discern no basis to disturb it. If
15 anything I think it would be more within the court's
16 responsibilities to have remitted the verdict because
17 clearly I think they may have relied on some things that are
18 not compensable.
19 But I don't -- I think there's sufficient evidence in
20 the record to support his, the landowner's, contention that
21 he can no longer use the property for the purpose for which
22 he purchased it. I hope that wasn't too redundant. To
23 which he bought it.
24 And so I think clearly the verdict is within the realm
25 of -- so clearly the jury believe the landowner and they

1 believed -- they drew the line somewhere in the middle of
2 what -- of what they believed the loss -- or the diminution
3 in value to the remainder was of this property and the cost
4 to upfit it.
5 Because I am very observant. And I watched them. They
6 looked at the sign. They looked at the parking spaces.
7 They were looking at the width of the parking spaces. They
8 were looking at the distance of the sign from the building.
9 They went on the other side. They looked at its visibility
10 from the carwash which is next door over into -- they were
11 very observant. And they took about 35 minutes to -- I
12 think we were there about 35 minutes to look at that
13 property. And they were very observant.
14 And again, I, in my exercise of authority determined I
15 would just let them go inside of the building. I wasn't
16 going to have the deputies go over there and say stop, don't
17 go into the building. Because I thought that would have --
18 it would have just been an unnecessarily heavy hand. And I
19 just didn't see the point of it. And they had already seen
20 the pictures anyway so.
21 And that is the other point. They had already seen
22 pictures of the interior of the building. So I could really
23 discern no prejudice from that either. I will note your
24 post-trial motions were heard and denied.
25 If you need anything more specific than that you will

1 get a copy of the transcript and specific findings of fact
2 and conclusions of law. And we'll do a Form 4.
3 Now, I think that we need to deal with -- give me one
4 moment. It is my understanding pursuant to 28-2-510 that
5 when the landowner prevails in a condemnation action in
6 addition to his compensation for the property may recover
7 his reasonable litigation expenses by serving on the
8 condemnor and filing with the Clerk of Court an application
9 there within 15 days.
10 Okay. So they -- y'all have 15 days to do that. So
11 that's not something I need to deal with right now. Let's
12 see here. For the purposes of this section prevails means
13 that the compensation awarded other than by settlement for
14 the property exclusive of interest is at least as close to
15 the highest valuation of the property that is attested to at
16 trial on behalf of the landowner as it is to the highest
17 valuation of the property that is attested to at trial on
18 behalf of the condemnor.
19 MR. MURPHY: Your Honor ---
20 THE COURT: That's a little convoluted.
21 MR. MURPHY: It does not apply to us.
22 THE COURT: Okay.
23 MR. MURPHY: We did not prevail on this statute.
24 MR. MITCHELL: The County agrees.
25 THE COURT: Okay. You won't get an argument from me.

1 If y'all feel you did it, I'm fine with that. I have to be
2 honest, I'm not really particularly familiar with this
3 statute anyway. We try so very few condemnation cases
4 anymore that -- I thought it was similar to the mechanic's
5 lien statute. But as I'm reading I am thinking it is a
6 little different. Okey doke.
7 Is there anything further before we adjourn for the
8 evening, from the landowner?
9 MR. MURPHY: Nothing, Your Honor.
10 THE COURT: From the County?
11 MR. FERRARA: Nothing, Your Honor.
12 MR. MITCHELL: No, Your Honor.
13 THE COURT: Y'all have been troopers. Have a wonderful
14 evening.
15 (Whereupon the trial concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for Charleston County, South Carolina, reported by court reporters Phyllis Norton on October 16, 2013 and Sharon Vizor October 17, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: December 29, 2013

Certified Transcript Provided For: MURPHY w/ William Walker
Certification Reference # 122913 CVR

State of South Carolina	)	Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
County of Charleston,	)	Transcript of Record
Plaintiff,	)	2012-CP-10-4511
V.	)	
Walter G. McAdory,	)	
Defendant.	)	

October 17, 2014

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge, and a Jury

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

Bernard Ferrara, Esquire

Attorney For the County

Chris Murphy, Esquire

Abigail B. Walsh, Esquire

Attorneys For the Landowner

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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1 Thursday, October 17, 2014

2 (The following requested portion of the transcript
3 of record was reported as follows.)

4 MR. MURPHY: Madam foreman, ladies and gentlemen of
5 the jury, I think you can see why there's never going to
6 be a movie about a condemnation case, but that doesn't
7 mean it's not important.

8 And we appreciate your time. We know this is an
9 inconvenience to you. So myself, Ms. Walsh, and
10 Mr. McAdory thank you for serving.

11 Now, this case is about theory versus reality.
12 Now, in theory you could never walk through that door
13 because you could always get a little bit closer without
14 passing through it, but that's not reality.

15 Reality in this case is that Mr. McAdory paid
16 $375,000 for this property. The reality is that he had
17 to make permanent improvements to update it for his
18 intended use as a garage, and the reality is he has to
19 move his business as a result of this taking.

20 Now, no one would go through the hassle and the
21 inconvenience of moving their business unless they
22 absolutely had to. And that is, I think, the strongest
23 evidence that the highest and best use has changed. It
24 was a garage and the garage left because it wasn't
25 functionable.

1 Now, when the highest and best use changes the
2 value of the buildings change as well because they are
3 outfitted for a garage and that's the use that they are
4 outfitted for, and nobody is going to pay money for a use
5 that they are not going to apply to the project -- to
6 their property. So in essence, the buildings
7 automatically lose value, and the reasoning is that if
8 someone comes in and rents this place or buys it they are
9 going to have to make improvements to the property. If
10 it's a restaurant they are going to have to make changes,
11 and that's going to be a substantial investment.
12 The other option they have is to demolish the
13 building. Neither of these options affects the market
14 value of $375,000, and the logic is because Glenn is not
15 going to sell it for less than what he paid for it. That
16 makes perfect sense.
17 So really, the only prospective buyers or tenants
18 are going to be national chains; Dunkin' Donuts,
19 Starbucks, some big-time developer that's going to come
20 in, and that's evidenced by the four comparable sales
21 that Mr. Crider used. He had a Dunkin' Donuts, a
22 Bojanles', a shopping center, and something else I can't
23 recall, but as he testified, assuming that those buyers
24 purchase this property they would demolish the building.
25 They pay the 375 but they would demolish the building and

1 redevelop the property.

2 Now, here, had Glenn bought a turnkey garage he
3 would have paid a lot more for it, but he bought a piece
4 of property that had an old building on it and he in turn
5 only had to pay 375,000. Now, he thinks the market value
6 of this property in the before is 375, and you can
7 understand that because that's what he paid for it.

8 Now, the County is playing games with this before
9 value. They are saying we didn't consider the building;
10 it might have value, it might not but I didn't look at
11 it. And since it wasn't touched it's not part of the
12 taking, it's not affected, and the improvements might
13 have added value but I don't know.

14 And the reason that they are taking that position
15 is because of a theory, and the theory is that I don't
16 know if this is the highest and best use, was as a
17 garage. It's as commercial.

18 Well, all the properties are commercial.
19 Everything is commercial out there. It's easy to sit up
20 there and say, Well, it's a commercial use in the before,
21 it's a commercial use in the after.

22 Well, of course it is, but you have to look at what
23 the people invested into the property and what the use is
24 because depending on the use of the property directly
25 correlates to the value of the improvements.

1 Now, when you are dealing with the taking I would
2 submit that the government has the responsibility to
3 consider everything the landowner believes is relevant.
4 They need to ask the landowner how this project is
5 impacting his property, how it's impacting his business.
6 He has absolutely no choice and he should get every
7 benefit of the doubt here.
8 The reality is that this project, Mr. McAdory
9 testified, impacts the land in three ways. It
10 eliminates all the parking in front, it eliminates the
11 signage, and it reduces the developable area in the
12 after. And all three of those impacts reduce the market
13 value of the property.
14 And then we are getting more games from the County.
15 With regard to the parking spaces, You didn't have six
16 spaces out there; you only had two. Well, then it
17 changed to maybe three.
18 Well, the fact of the matter is he had six spaces,
19 and when you are pressed for space you make the use of
20 every inch of space you get. My law office is right down
21 the street, my former office. We had the exact same
22 parking. We parked three cars in and three cars would
23 come behind, and if you look down Meeting Street you'll
24 see a number of houses that do the exact same thing.
25 The County is sitting there saying, We know you had

1 great signage in the before but just put it on the wall,
2 put it over here. It's just as good as before, trust me.
3 We know we reduced the area that you could develop but in
4 theory that doesn't change the market value, so just take
5 this. Take this money and go.
6 And the reality is they are trying to force
7 Mr. McAdory in a lesser position in the after than he was
8 in the before, and that's just not the law.
9 Now, the after value, Mr. McAdory testified, is
10 worth $225,000, which is the land value that Mr. Crider
11 put on the property. He also testified that he had a
12 real estate agent, he consulted a real estate agent who
13 told him that $225,000 was the after value as well.
14 Now, this is just compensation. Your job is to
15 make him whole. Mr. McAdory wants $150,000, which is the
16 difference between what he paid and what he could sell
17 the property for.
18 Now, the County applies theory. They are not
19 looking at reality. They want you to ignore the impacts
20 to the business, ignore the impacts to the improvements.
21 It's 25 bucks a square foot. Here is a little money to
22 fix these problems that you think with regard to parking
23 and signage and be on your way because we hired an
24 appraiser. And Mr. Ferrara stood up there and said, He
25 is the best appraiser. He is best. We've got the best

1 here.

2 And that appraiser did a number of tracts in this
3 case and he used the exact same comps on every property
4 and he made zero adjustments, and when he did his update
5 he changed one comp and charged an additional $2500.
6 And, folks, what that tells me is that was like a shop.
7 He was spitting these appraisals out. He wasn't giving
8 them much thought because time is money. He was charging
9 a flat fee and the more time he spent on it the more
10 money he lost.

11 Now, the reality is is that Glenn has a 2500 dollar
12 a month mortgage on this property. He has to pay taxes
13 on the property. He has to maintain the property. He
14 has to pay insurance on the property. And to get up here
15 and say, Oh, he could rent it for $1700 a month, that
16 doesn't affect him. He's in good shape then.

17 Well, that's ridiculous and I found that obscene
18 because nobody is going to keep this property and rent it
19 out at an 800 dollar a month loss. The reality is he's
20 going to have to sell this property. He cannot keep it.
21 He testified he cannot afford to keep it, and he's either
22 going to have to rent it for 6 or $7,000 a month, which
23 we know is impossible, or sell it, and that's really what
24 he's left. And if he can't sell it fast he's going to
25 have to sell it under duress for less than $225,000.

1 And what the County says is in theory, Yeah, he
2 could rent it out and he could sell it, so there's no
3 damage.
4 But the reality is if that property is vacant for a
5 year he loses the building anyway. If he falls behind on
6 payments he's going to lose the whole property.
7 Now, the County doesn't care about his situation in
8 the after, and the reason I could say that with such
9 authority and such conviction is that they had the option
10 to buy the entire tract of land from Mr. McAdory. They
11 could have purchased the entire tract, and if they did
12 that we would not be here.
13 And I say that because if you have a land value of
14 $224,000 in the after they say just compensation is
15 $52,000. And then they've elicited testimony from the
16 bank appraisal that the house or the building was worth
17 approximately $95,000 in the after. And when you add
18 them all up you have $371,000 that they could have
19 collected or that they were entitled to.
20 And had they purchased the property for $375,000
21 from Glenn they could have turned around and sold it and
22 recouped all of their money. They would have only paid
23 an extra $4,000 in this case. That's it. But the reason
24 they didn't buy the property, because it's all theory.
25 Okay. If they really believe their numbers they would

1 have bought the property and turned around and sold it
2 and made up all the difference, but they didn't do that
3 because you can't. It's not the reality. It's not going
4 to sell for that much money.
5 Now, we told you at the beginning that your job is
6 to make Mr. McAdory whole. This is his one shot. The
7 testimony before you is a low of 52,000, a high of
8 $150,000. You folks have the right to find either one of
9 those sides or anywhere in the middle, and absolutely
10 your right as jurors.
11 And what I would suggest as an alternate way to
12 look at this; in the before we have the land and the
13 building under Glenn's testimony at 375. We have the
14 land in the after at 244, and when you deduct those
15 that's a difference of $131,000. The County has offered
16 an additional 19.5 to bring the total amount of just
17 compensation -- or I'm sorry, to bring the -- this gives
18 you the $150,000 just compensation.
19 Now, if you folks can look at this and say, Well,
20 maybe he shouldn't get the cost to cure because the
21 buildings are going to be destroyed any ways, and then
22 you would be absolutely within your right to give him
23 just $131,000, which would be the difference in the land
24 values.
25 Now, when you go back to that jury room and make a

1 decision how to make Glenn whole I would ask that you
2 look through this from Glenn's eyes. Look at the reality
3 that he faces rather than the theory that the County is
4 trying to force on you. Thank you.
5 THE COURT: You may proceed.
6 MR. FERRARA: Thank you, Your Honor.
7 THE COURT: You're welcome.
8 MR. FERRARA: Ladies and gentlemen of the jury,
9 first of all I'd like to begin my closing statement by
10 thanking you all for listening to all the evidence
11 presented by the lawyers in the courtroom.
12 Throughout most of the trial the evidence has been
13 technical and it's been graphic, and I appreciate your
14 patience. And the subject matter of this lawsuit is a
15 field of knowledge that we are not accustomed to in
16 settling disputes, and I hope you find that the evidence
17 was both revealing and probative.
18 And before I get to the next part of my closing
19 statement I want to just give you some facts so when you
20 go back in the deliberation room you've got the actual
21 acreage and square feet. I know you heard it from the
22 County's witnesses, I know you've heard it from the
23 landowner's witnesses, you're likely to hear it again in
24 the charge from the Judge, but I want all of you all to
25 hear so we are all operating on the same page.

1 This will only take a couple of seconds, and it's
2 only going to be six figures. The parcel before the
3 County acquired it, we call that an in the before, .254
4 acres, 11,064 square feet. The size of the property
5 after the acquisition, .224 acres or 9,777 square feet.
6 The amount of the acquisition, .030 acres or 1,287
7 square feet.
8 During my opening I told you what the evidence
9 would show, and the theme of the County's case through
10 this whole trial has been to conform with the words of
11 the statute, to conform with the letter of the law, and
12 that letter of the law is when you determine just
13 compensation in South Carolina only the value of the
14 property to be taken and any diminution in value of the
15 landowner's remaining property, and that's what you all
16 are here to determine, those two components, to arrive at
17 the amount of just compensation.
18 You heard Charles Crider, the expert, and he is the
19 highest licensure appraiser in the State of South
20 Carolina. He is good. And I told you why the County
21 hired him, because it is an important reason to
22 Mr. McAdory and to the County because it is the subject
23 of the surrender of a liberty. It's a surrender of a
24 private right. It's a surrender of your property.
25 So we went out and hired someone professional, an

1 expert in their field. He testified today before you as
2 an expert in that field, top of that field. You all
3 heard his testimony, and his testimony is basic. He
4 looked at the value of the land that was taken and
5 assigned a value. He looked at the termination of two
6 parking spaces, assigned a value. He looked at moving
7 the business sign and he assigned a value.
8 Just compensation is all about the determination of
9 fair market value. Fair market value, again, is a
10 standard in South Carolina defined as what a willing
11 seller and a willing buyer will do in a market
12 uninfluenced by any other matters. That's what fair
13 market value is.
14 So you may make improvements to a property and when
15 it's placed on the market the property might not sell
16 because of whatever you've placed on the property to
17 improve it. The market conditions as we are all aware
18 declined from 2007 and 2009. So million dollar
19 properties sold for $500,000.
20 That's what fair market value is all about. It's
21 not about how many improvements I placed on my property.
22 It's a fluctuating standard. It's a fluctuating market.
23 Values for real estate are determined by market
24 conditions, what the market can be, and I'm sure all you
25 all are aware of that.

1 Crider, Mr. Crider, his appraisal again is
2 consistent with the County's theme in this case.
3 Mr. Murphy called it the theory, the County is
4 theoretical or our value is based on some theory that's
5 not practical. Well, I submit to you that it's based on
6 reality.
7 Then you heard testimony from Mr. Valiquette, the
8 project engineer, and he said the roadway is going to
9 stay where it is. The only thing that's going to change
10 is the new right-of-way line which will be six feet from
11 the front of the building and eliminate the parking
12 spaces in the front. And because the sign is in the
13 right-of-way the sign will have to be moved.
14 Next you heard testimony of Mr. McAdory. McAdory,
15 as his counsel just told you, is seeking $150,000 for
16 just compensation to him due from the County. And he
17 testified, again, that he made improvements to the
18 property and that he lost the parking in the front and
19 that he has got to move the sign and he can't sell it,
20 and if he does sell it he's going to lose money then when
21 he purchased it in 2011.
22 But I want to talk to you about -- let's follow
23 Mr. McAdory's logic to its end. What Mr. McAdory has
24 told you all is that I want $150,000, but as recently as
25 this morning you all heard testimony from Mr. McAdory and

1 he said, I'm not an appraiser. You heard testimony from
2 Mr. McAdory when he said, I want $150,000, that's the
3 value of the dirt. The building has no value. And then
4 he turns around and says, I can rent it for $1700 a
5 month. I can get $20,000 a year for that. So the
6 building does have value.
7 So what he's asking you all to do is to consider
8 his argument, his methodology, his way to arrive at this
9 figure of 150,000 by saying to yourself, Okay, the
10 building has no value. The 150,000 represents just the
11 dirt. Okay. Got that. And then walk over here and
12 say, Oh, but you know what? The building does have
13 value because I can rent it and I can make $20,000 a
14 year on it.
15 That's the problem with this case. That's the
16 problem with his case, and that's not theoretical.
17 That's just some kind of flawed methodology.
18 And you heard Mr. Crider's methodology; succinct,
19 by the book and accurate. And I'm going to show you that
20 methodology, and it's not going to take long. I know
21 we've had a long day. This is Crider's appraisal in a
22 nutshell. You've heard it verbalized. You've taken
23 notes to try to, I'm sure, come to these figures but
24 let's talk about -- let's break it down.
25 This is called the value of components. Again, we

1 are looking at just the land. The land value before the
2 acquisition, Mr. Crider assigned the value of $276,600,
3 just the land. When you get your taxes from Charleston
4 County Auditor and you look at the -- I mean, your
5 assessment from Charleston County Assessor, you see how
6 she breaks down the value of the property. You'll have a
7 land value and you'll have a building value. Well, this
8 is the land value. The land value of the property just
9 went -- this identified it for you.
10 And by the way, Mr. McAdory purchased the property
11 in 2011 and the land value assigned to the property then
12 was $280,000. So we are there. Land value after the
13 acquisition 224,930. How did Mr. Crider arrive at that
14 number? Again, without going through all the math, found
15 sales comparables in the neighboring area, came up with a
16 per square foot value. I think his range was $17 per
17 square foot to $34 per square foot. He arrived at $25
18 per square foot and he applied it times the remaining
19 square feet that I gave you all earlier in my opening
20 statement and came up with that figure.
21 Oh, and by the way, the $25 per square foot,
22 remember when Mr. McAdory talked about buying the
23 property in 2011? That's the same square foot amount
24 that his appraisal appraised on the property.
25 So we've taken the before value, you subtract the

1 after value and you come up with your difference 51,670.
2 In a condemnation action we place that amount of money
3 into the clerk of court's office and this gentleman can
4 either leave it there until you all deliberate and decide
5 and make 8 percent interest on that money or he can
6 withdraw it after the next day of filing the action.
7 He's withdrawn that money. He has that money.
8 The next group of figures is what we identified as
9 the value components of the acquisition. There is the
10 magic figure, the 1,287 square feet times the $25 per
11 square foot equals the value of the land, 32,170, plus
12 the cost of cure, 19,500 is 51,670. That cost to cure,
13 again, $15,000 to improve the parking in the rear, to
14 take down the fence, extend the fence, pave a 32-by-30
15 area, some 960 square feet for much more than two parking
16 spaces, and the $4,500 to move the sign. There's your
17 19,500. Again, there's the just compensation of the
18 County deposited with the Court.
19 Here's the final statement of value, and all this
20 is is this figure done a different way.
21 The reason why Mr. McAdory's methodology is flawed
22 is according to Mr. McAdory the $150,000 that he wants
23 the jury to award him as just compensation -- now, I
24 don't have a calculator but I did it on break. If you
25 divide $1,287, 87 square feet, which is what the County

1 acquired, into 150,000, that price per square foot is
2 $116.55 per square foot, four times the $25 per square
3 foot. That fact coupled with this whole notion that he
4 wants you to give no value to the building because if
5 150,000 represents just dirt and then you step over here
6 and say, Oh, yeah, but see there is value to the building
7 because I can rent it out for $1700 a month or 20 some
8 thousand dollars a year, I'm struggling with that.
9 Crider is struggling with that.
10 So that brings us to this appraisal. This is
11 genuine, this is authentic, this is supported. And I'm
12 not going to hold you here much longer. I had a closing
13 around 25 minutes and I said I can't hold the jurors that
14 long, so I'm going to make it eight to ten. I hope to
15 have a couple minutes left. But I'd like to add a couple
16 things. I want to add a few words about Mr. McAdory.
17 Mr. McAdory appears like a self-made man, a hard
18 worker, appears like a genuine individual. He's a
19 likable person. But this case involves the determination
20 of fair market value, the determination of just
21 compensation, and that's not something Mr. McAdory does.
22 He told you he's not an appraiser. He doesn't
23 appraise property. So I struggled with has Mr. McAdory
24 ever appraised a piece of property? I don't think so.
25 And he's presented you all this methodology that we think

1 is flawed. And so I submit to you, ladies and gentlemen
2 of the jury, is this the kind of expertise you all want
3 to rely on to arrive at the amount of just compensation
4 or do you want to rely on the experience and the
5 expertise of Crider to help you all arrive at the amount
6 of just compensation?
7 When you compare Mr. McAdory's expertise with
8 Mr. Crider's experience and expertise in how you appraise
9 property, in how you determine fair market value, and how
10 you determine just compensation you can only come to one
11 conclusion. So I'll let you guys -- I want to wrap it up
12 with one last bit.
13 Accordingly, Charleston County as the condemnor in
14 this action asks that when you return a verdict that you
15 look at the evidence and the facts and that you
16 compensate Mr. McAdory $51,670 for the land taking and
17 the cost to cure, the parking, and the sign.
18 Again, I appreciate you all sitting through this.
19 Again, it's an area of the law that we don't get to hear
20 cases every day on. I know it's a new feel to you all.
21 But again, I appreciate your patience. I appreciate your
22 attention, and thank you again for your time.
23 THE COURT: Mr. Murphy, you may proceed.
24 MR. MURPHY: Thank you, Your Honor.
25 Mr. McAdory is not well educated. He's a simple

1 man, and he doesn't have all the fancy credentials that
2 Mr. Crider had but you don't have to be a Harvard
3 graduate to realize that if you are going to lose $800 a
4 month, almost $10,000 a year maintaining a piece of
5 property that it doesn't have value.
6 And you're right, Mr. McAdory did accept that
7 $51,000 that was initially offered because he had to. It
8 would be real nice if he could just let it sit and earn
9 eight percent interest but he can't afford to do that. I
10 know I can't.
11 The road being moved closer or not being moved at
12 all towards the property is a complete red herring. We
13 haven't made one complaint about the road moving closer
14 or not moving closer. It's the right-of-way and moving
15 closer that affects the parking, that wipes out the
16 signage.
17 And again, I will go back to the theory. If they
18 really thought the building was worth about $95,000 and
19 they really thought that the property was worth $225,000
20 in the after they could have bought it and sold it for
21 and recouped $319,00.
22 Now, as for this cost to cure, you folks saw that
23 parking lot. It was a mess out there, and you actually
24 got pretty lucky because there was a tow truck leaving as
25 you guys were coming in, and that tow truck dropped that

1 car off right in front of where that proposed parking lot
2 is. It couldn't get back there to maneuver around.
3 And finally, I belive, he made improvements to the
4 property to update his garage. He's not asking for those
5 improvements. He doesn't want them because he realizes
6 they didn't add value to the property, because whoever
7 buys it is not going to utilize those improvements. They
8 are going demolish the building. What he wanted was to
9 use those improvements for 15 years and he only got to
10 use them for two.
11
12 ** END OF REQUESTED PROCEEDINGS **
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1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 17th day of
9 October 2013.
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.
12
13 September 6, 2014
14
15 SHARON L. VIZER
16 CIRCUIT COURT REPORTER
17
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COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 10-17-13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 1**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

FAIR MARKET VALUE

Just compensation is the amount of money which would put the landowner in as good a position financially as he was in prior to the condemnation of the property.[1]

In deciding what is "just compensation", you should consider the fair market value of the property taken on the date of the taking, any decrease in the fair market value of the remaining property, and any benefits from the proposed project including the value of any property or rights given up or given to the landowner as a result of the project.

Fair market value is the price a willing buyer would pay and willing seller would accept in the ordinary course of business if there were no forced sale.[2]

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[1] Blue Ridge Elec. Coop. v. Combined Utility of Easley, 279 S.C. 135, 303 S.E.2d 91 (1983)

You may consider comparable sales of property to determine the fair market value of the property. A comparable sale is one which is not too remote in time and which has some similarities. The sale does not have to be in the same location as the property condemned, but it should be reasonably comparable.[3]

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.[4]

You should not consider any inconvenience or damage of a temporary nature to the landowner arising from the construction. The inconvenience and temporary effects which occur during the construction period are not to be considered as permanent and, therefore, should not be included in the basis for the award.[5]

In determining fair market value you may consider this example: Imagine that the landowner had put the property in question up for sale. A buyer expressed interest and they both agreed upon a price on the date of taking. During the negotiations, the landowner would have pointed out all the features that enhance the value of the property. The buyer, on the other hand, would have pointed out things that diminish its value. Only after discussing all these factors, and taking the time to consider them carefully, would the buyer and the landowner finally agree upon a price. That figure would be the property's fair market value, the amount you have to determine by your verdict.

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[2] S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963)

[3] City of North Charleston v. Claxton, 315 S.C. 56, 431 S.E.2d 610 (Ct. App. 1993)

[4] S.C. State Highway Dep't v. Grant, 265 S.C. 28, 216 S.E.2d 758 (1975)

[5] Collins v. City of Greenville, 233 S.C. 5065, 105 S.E.2d 704 (1958)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 2**

HIGHEST AND BEST USE

The fair market value of property is not necessarily limited to what the landowner uses it for. The use to which an owner may realistically and legally put the property is one thing you must consider in arriving at its value. In other words, you must consider the property's highest and best use.

This means the landowner is entitled to compensation upon the basis of the most advantageous and profitable use of his land. In estimating the value of the property condemned, all of the uses to which it may be applied, or for which it is adapted, which affect its value in the market, are to be considered, and not merely the condition it is in at the time and the use to which it was then applied by the owner.[6]

[6] S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963) (citing City of Orangeburg v. Buford, et al., 227 S.C. 280, 87 S.E.2d 822; 29 C.J.S. Eminent Domain § 160)

Therefore, you may consider the potential of property as an element affecting value. However, it is not sufficient to show that the potential is a mere possibility; it must be shown that the potential is reasonably probable.[7]

Thus, you must be realistic. In considering whether a "use" advanced by either party is the property's highest and best, you must determine if the property is suitable for that use, and whether anybody would want it for that use.

[7] S.C. State Highway Dep't v. Miller, 237 S.C. 386, 117 S.E.2d 561 (1960); Housing Authority of City of Charleston v. Olasov, 320 S.E.2d 478 (1984); Carolina Power and Light Co. vs. Copeland, 188 S. E. 2d 188 (1972)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 3**

EXPERT WITNESSES

No one will ever know for sure what the price would have been if a sale really had taken place on the date of taking. Your job is to determine what the price *probably* would have been. To help you do this, the County of Charleston has presented an expert whose explanations and opinions may help you.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education, and experience, has become expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion.

The source of the expert's knowledge must be revealed to remove his opinion from the realm of mere guesswork. A bare declaration of his knowledge of the value of the property is insufficient.

The testimony of the experts is offered only to aid and assist you, not to impose a set value upon you. You may consider any expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness's opinion is not based on sufficient education, and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

S.C. State Highway Dep't. v. Westboro Weaving Co., 244 S.C. 516, 137 S.E.2d 776 (1964)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-3801
County of Charleston,	)	
Condemnor,	)	
vs.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 4**
Walter G. McAdory, LLC,	)	
Landowner,	)	
and	)	
Branch Banking Trust and Company,	)	
Other Condemnee.	)	

The landowner has the burden of proving his damages as to the actual value of the land to be taken and any special damages resulting from the taking.[8] In order for damages to be recoverable, the evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy."[9]

[8] Leventis v. S.C. Dep't of Health and Envtl. Control, 340 S.C. 118, 530 S.E.2d 643 (Ct.App.2000)
[9] Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 5**

LEASE PROVISIONS

Lease provisions are construed under rules of contract interpretation.

It is also a question of law whether the language of a contract is ambiguous. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.

Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it.

S.C. Dep't. of Transp. v. M &T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 6**

LEASE PROVISON

A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 7**

CONDEMNATION CLAUSE IN LEASE

It is generally held that parties may agree in the lease to a method or formula of valuation or compensation in the event of condemnation Where a landlord and tenant have contractually agreed as to the disposition of compensation in the event of condemnation, such an agreement is generally held binding. If the lease itself includes a provision in respect of the rights of the parties in the event of the condemnation of the leased premises, such provision is controlling, if applicable to the particular case. Specific provisions in a lease spelling out the respective rights of the parties to that lease are valid and controlling in the event the property is condemned. Such lease provisions have uniformly been upheld.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7(2008)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 8**

COMMON LAW

When a lease contains no provision as to the effect upon it of the condemnation, the court looks to the common law rule.

S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 9**

ALLOCATION PROCEEDING

A proceeding to allocate any condemnation funds is by statute a proceeding in equity.

S.C. Dep't. of Transp. v. M & T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7(2008) quoting S.C. Code Ann. Section 28-2-460.

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

S.C. Code Ann. Section 28-2-460

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 10**

As to damages, the burden is on a party pleading a fact to prove it. This general principle of litigation has been applied to disputes concerning apportionment of condemnation awards in other jurisdictions, and we apply it here as well. The owner of the leasehold estate bears the burden of establishing the damages sustained to its leasehold estate as a result of the partial taking of the land. The lessee has the burden to show any damages attributable to the loss of leasehold interest, and the balance of damages, if any, belong to the reversionary interest of landowners. During the apportionment trial, the burden was on [lessee] to establish her damages. Proof of tenancy in the condemned premises is not necessarily proof of compensable loss. The lessee has the burden to show the amount of the damages attributable to his leasehold interest, if any. The balance of the damages, if any, would belong to the reversionary interest of the landowners.

S.C. Dep't. of Transp. v. M &T Enterprises of Mt. Pleasant, 379 S.C. 645, 667 S.E.2d 7 (2008).

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2012-CP-10-3801
County of Charleston, Condemnor, vs. Walter G. McAdory, LLC, Landowner, and Branch Banking Trust and Company, Other Condemnee.	)	**CONDEMNOR COUNTY OF CHARLESTON'S JURY CHARGE NO. 11**

Loss of business is not an independent element of damage in this case.

S.C. State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963)

SV COURT'S EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 10-17-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-4511

COUNTY OF CHARLESTON,

Condemnor,

vs.

WALTER MCADORY

Landowner,

and

BRANCH BANKING AND TRUST COMPANY AND SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Other Condemnees.

LANDOWNER'S REQUEST FOR JURY INSTRUCTIONS

The Landowner, Walter McAdory, by his undersigned attorneys, requests the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, give the attached requests for jury instructions numbered 1 through 7 pursuant to Rule 51, S.C.R.C.P. The Landowner submits these requests for instructions prior to the commencement of trial to afford the Court and opposing counsel an opportunity to review the Landowner's requests. The Landowner requests the Court to advise which of the requested instructions the Court will grant or reject, in whole or in part, thereby affording the Landowner a reasonable opportunity to submit proposed instructions in an alternative form in accordance with the Court's rulings. The Landowner further requests that the Court indicate all instructions it will give the jury on its own motion, at the request of the Landowner, and at the request of the Condemnor, prior to the commencement of closing

arguments. Finally, the Landowner further requests to have any requested instructions refused or modified by the Court made an exhibit to the record for purposes of any possible appeal.

Respectfully submitted,

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Abigail B. Walsh (SC Bar # 71291)
Christopher Murphy (SC Bar # 14184)

ATTORNEYS FOR LANDOWNER

October 14, 2013
Charleston, South Carolina

CONDEMNOR'S REQUEST TO CHARGE NO. 1

Actual Value

The "actual value" of land taken in condemnation means the market value of such land.

South Carolina State Highway Department vs. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963).

CONDEMNOR'S REQUEST TO CHARGE NO. 2

Comparable Sales

I charge you that the value of real property may be shown by evidence of the price realized from sales of similar property in the vicinity when not too remote in point of time. Such sales are known as comparable sales. To be comparable, such sales must occur in an open market and must be similar as to time of sale, location, size, and character.

S.C. State Highway Department v. Estate of Leogue, 251 S.C. 368, 162 S.E.2d 532, 533 (1968); S. C. State Highway Department v. Hines, 234 S.C. 254, 107 S.E.2d 643 (1959).

CONDEMNOR'S REQUEST TO CHARGE NO. 3

Before and After Rule

An alternative way to determine just compensation is to determine the difference in the value of the land before and after the taking.

South Carolina Department of Highways and Public Transportation vs. Cheston, 278 S.C. 464, 298 S. E. 2d 447 (1982).

CONDEMNOR'S REQUEST TO CHARGE NO. 4

Highest and Best Use

The value of property condemned is not to be estimated simply with reference to the condition in which the owner has maintained it, or to the use to which it is applied at the time, or to any particular use, but with reference to any and all uses or purposes for which it is suitable, or to which it is reasonably and lawfully adapted or adaptable, or convertible.

The best and highest use, or the most valuable, advantageous, or profitable use, to which property taken for the public use or purpose is reasonably, practically and lawfully adapted or available, or for which it is needed, or is likely to be needed, in the reasonably near future, should be considered.

South Carolina State Highway Department vs. Bryant, 242 S.C. 411, 171 S.E.2d 349 (1963).

CONDEMNOR'S REQUEST TO CHARGE NO. 5

Cost to Cure

In awarding the Landowner a just compensation, you may consider the cost to cure the damage to the remaining property.

Nichol's Law of Eminent Domain, Section 18.18; State Highway and Transportation Comm'r vs. Allmond, 220 Va. 235, 257 S.E.2d 832 (1979).

CONDEMNOR'S REQUEST TO CHARGE NO. 6

Damage to the Remainder

I charge you that it is your responsibility to set a price on the amount of land taken. In doing so, you will use as your guide the fair market value of the property. The term "fair market value" (has been/will be) explained to you. Also, you must determine whether or not the landowner's remaining land has depreciated in value because of this take. Bear in mind that simply because a portion of a lot or piece of property is taken does not necessarily mean that the remaining land has depreciated in value. It is the responsibility of the landowner to establish such depreciation by affirmative evidence furnishing a basis from which a reasonable and proper estimate of the amount of damage can be made. If you find that the remaining parcel has not depreciated in value because of the take, then your verdict will be in an amount that you determine is the fair market value of the property taken. If, on the other hand, the landowner has convinced you that the remaining parcel has been damaged, then you must find not only the fair market value of the property taken, but you must find a fair price for the damage to the remaining land.

South Carolina State Highway Department vs. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970); South Carolina State Highway Department vs. Westboro Weaving Company, 244 S.C. 516, 137 S.E.2d 776 (1964)

CONDEMNOR'S REQUEST TO CHARGE NO. 7

Landowner Can Testify to Value of and Damage to Property

The general rule in South Carolina is that a landowner is permitted to testify to the value of his/her land and his/her damages. It is not necessary for a landowner to show any special knowledge or expertise for such testimony as to the value of or damages to his/her land to be competent. The extent of a property owner's experience in real estate goes more to the weight of his or her testimony rather than to competency to testify. Likewise, the fact that a landowner's knowledge may be based in large part on hearsay or other incompetent evidence goes more to its weight than its admissibility.

Stanley v. Atlantic Title Ins. Co., 377 S.C. 405, 661 S.E.2d 62 (2008); South Carolina Dept. of Transp. v. Richardson, 335 S.C. 278, 516 S.E.2d 3 (Ct. App. 1999); City of Spartanburg v. Laprinakos, 267 S. C. 589, 596, 230 S. E. 2d 443, 446 (1976); South Carolina State Hwy. Dep't v. Wilson, 254 S. C. 360, 175 S. E. 2d 391 (1970); South Carolina State Hwy. Dep't v. Hines, 234 S. C. 254, 259, 107 S. E. 2d 643, 645 (1959); 18 S.C. Jur. Eminent Domain § 27

COURT'S EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT NO.
DATE: 10-17-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-4511

COUNTY OF CHARLESTON,

Condemnor,

vs.

WALTER MCADORY

Landowner,

and

BRANCH BANKING AND TRUST COMPANY AND SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Other Condemnees.

LANDOWNER'S ADDITIONAL REQUEST FOR JURY INSTRUCTIONS

The Landowner, Walter McAdory, by his undersigned attorneys, requests the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, give the attached requests for jury instructions numbered 8 through 10 in addition to previously provided jury instructions numbered 1 through 7 pursuant to Rule 51, S.C.R.C.P. The Landowner submits these requests for to afford the Court and opposing counsel an opportunity to review the Landowner's additional requests. The Landowner requests the Court to advise which of the requested instructions the Court will grant or reject, in whole or in part, thereby affording the Landowner a reasonable opportunity to submit proposed instructions in an alternative form in accordance with the Court's rulings. The Landowner further requests that the Court indicate all instructions it will give the jury on its own motion, at the request of the Landowner, and at the request of the Condemnor, prior to the commencement of closing arguments. Finally, the Landowner further requests to have any

requested instructions refused or modified by the Court made an exhibit to the record for purposes of any possible appeal.

Respectfully submitted,

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abigail@williamsandwalshlaw.com
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Abigail B. Walsh (SC Bar # 71291)
Christopher Murphy (SC Bar # 14184)

ATTORNEYS FOR LANDOWNER

October 17, 2013
Charleston, South Carolina

CONDEMNOR'S REQUEST TO CHARGE NO. 8

Credibility of Witnesses

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convinces you it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced toward either the plaintiff or the defendant, the opportunity for the witness to have seen the matters

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Small v. Pioneer Mach., Inc., 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).

CONDEMNOR'S REQUEST TO CHARGE NO. 9

Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion.

You should consider any expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness' opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert, and you do not have to accept an expert's opinion, even though it is uncontradicted.

Berkeley Elec. Coop., Inc. v. South Carolina Public Serv. Comm'n, 304 S.C. 15, 402 S.E.2d 674 (1991).

CONDEMNOR'S REQUEST TO CHARGE NO. 10

Just Compensation

This is a condemnation case arising under the law of eminent domain. Eminent domain means that the state of south carolina, or one of its agencies or branches, has the right to take private property for public use. This action is called condemning the property.

In this case, Charleston County has condemned 0.030 acres (1287 square feet) of land belonging to Walter McAdory, the landowner, for the construction of improvements to the Folly Road/Camp Road Intersection in Charleston County. Charleston County must pay for the property which has been taken for public use. Both parties in this case agree that payment must be made for the property. However, they disagree as to how much should be paid.

You are not to be concerned with whether the Charleston County had a right to take the property. You must only decide the amount the landowner should be paid in order to be adequately paid for the property. This amount is called just compensation. The landowner has the burden of proving the amount of just compensation by the preponderance, or greater weight, of the evidence.[1]

Just compensation is the amount of money which would put the landowner in as good a position financially as he was in prior to the condemnation of the property.[2] In deciding what is just compensation, you should consider the value of the property taken on the date of the taking, any decrease in the value of the landowner's remaining property, and any benefits from the proposed project including the value of any property or rights given up or given to the landowner as a result of the project.[3]

To determine just compensation, you must first determine the fair market value of the condemned property and the fair market value of the property which the landowner had after the condemnation. Fair market value is the price a willing buyer would pay and a willing seller would accept in the ordinary course of business if there were no forced sale.[4] You may consider comparable sales of property to determine the fair market value of the property. A comparable sale is one which is not too remote in time and which has some similarities. The sale does not have to be in the same location as the property condemned, but it should be reasonably comparable.[5]

---

[1] S.C. Code Ann. § 28-2-320.

[2] Blue Ridge Elec. Coop. v. Combined Utility of Easley, 279 S.C. 135, 303 S.E.2d 91 (1983).

[3] S.C. Code Ann. §§ 28-2-360 and -370.

[4] South Carolina State Highway Dep't v. Bolt, 242 S.C. 411, 131 S.E.2d 264 (1963).

[5] City of North Charleston v. Claxton, 315 S.C. 56, 431 S.E.2d 610 (Ct. App. 1993).

Fair market value includes the fair price for any current use of the property or any use which may be reasonably anticipated in the near future. The uses which may be considered must be so reasonably probable as to have an effect on the present market value of the land. You may consider all uses to which the property is and might be adapted. Compensation should be awarded based on the most advantageous and valuable use of the property, considering the existing or reasonably expected future businesses or wants of the community. You cannot consider a purely imaginative or speculative value. There must be a possibility considerable enough to practically affect the property's market value.[6]

Fair market value is not sentimental value or the price the property would sell for under special or extraordinary circumstances.[7] However, if the landowner has proven that the land possesses special value to him which can be measured by money, that value may be considered in determining the fair market value of the property.

The property of the landowner must be considered together as one tract, even though the landowner may have at one time filed plats showing a subdivision of the property.[8]

You should not consider any inconveniences or damages of a temporary nature to the landowner arising from the Folly Road/Camp Road Intersection Road Improvement Project. The inconvenience and temporary effects which occur during the construction period are not to be considered as permanent and, therefore, should not be included in the basis for the award.[9]

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[6] Carolina Power & Light Co. v. Copeland, 258 S.C. 206, 188 S.E.2d 188 (1972).

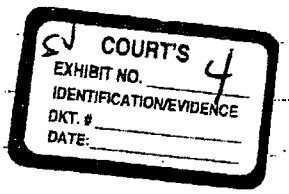
[7] South Carolina State Highway Dep't v. Grant, 265 S.C. 28, 216 S.E.2d 758 (1975).

[8] South Carolina Highway Dep't v. Terrain, Inc., 267 S.C. 186, 227 S.E.2d 184 (1976).

[9] Collins v. City of Greenville, 233 S.C. 5065, 105 S.E.2d 704 (1958).

Could we have a copy of law relative to just compensation?

M. Sharon Bartle
Foreperson



Ladies and Gentlemen of the Jury our procedures do not allow for a copy of the jury charge/instructions to be given to you. If there is a specific instruction that you would like given again or the entire instruction please advise us and I will accommodate your request immediately.

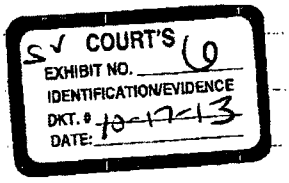
Could we get a calculator?

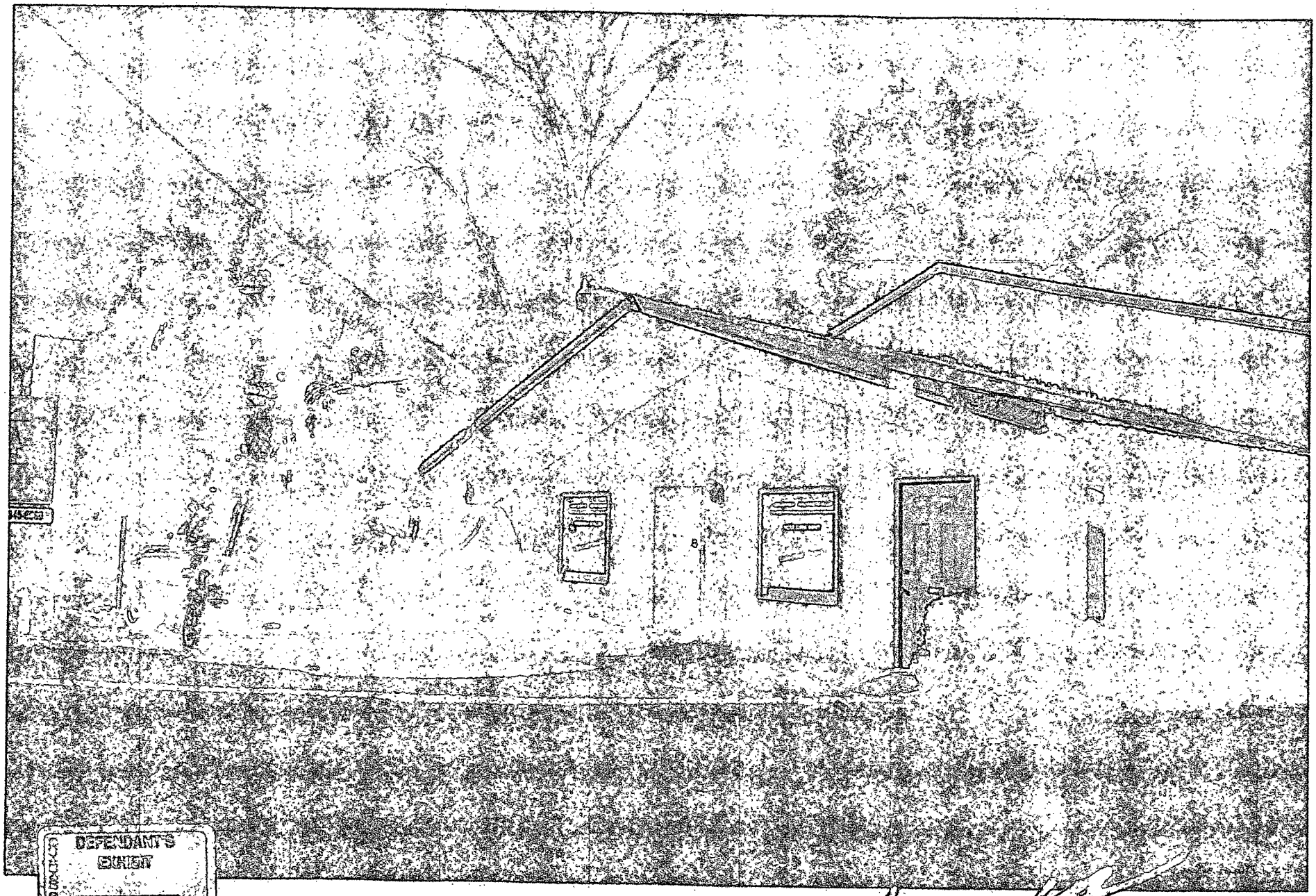
M. Sharon Bartshe
Foreperson

COURT'S EXHIBIT NO. 5
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 10-17-13

Could someone read the "Just Compensation" portion of the SC law pertaining to this case.

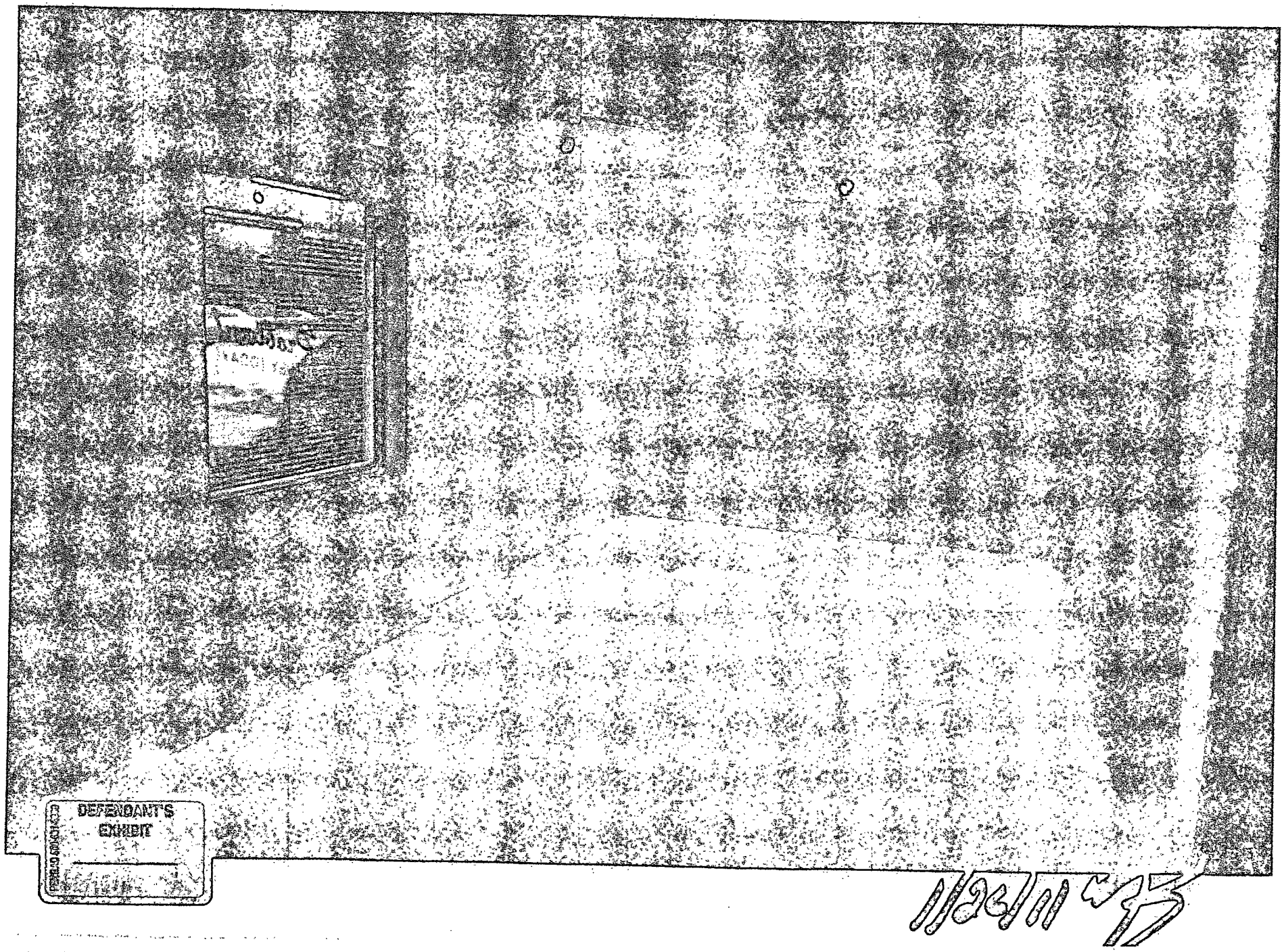
M. Sharon Bartsh
Foreperson





DEFENDANT'S EXHIBIT

11/26/11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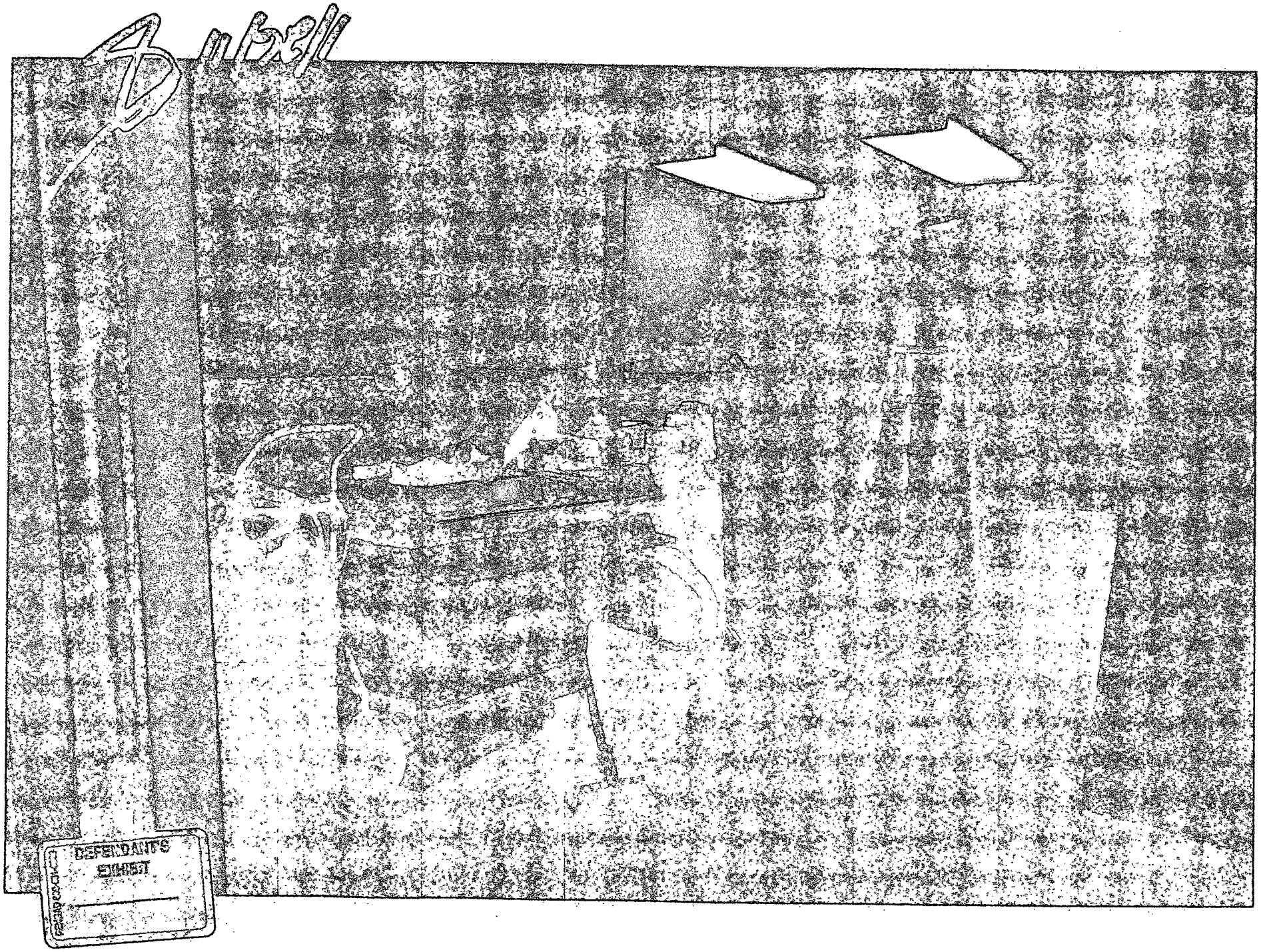
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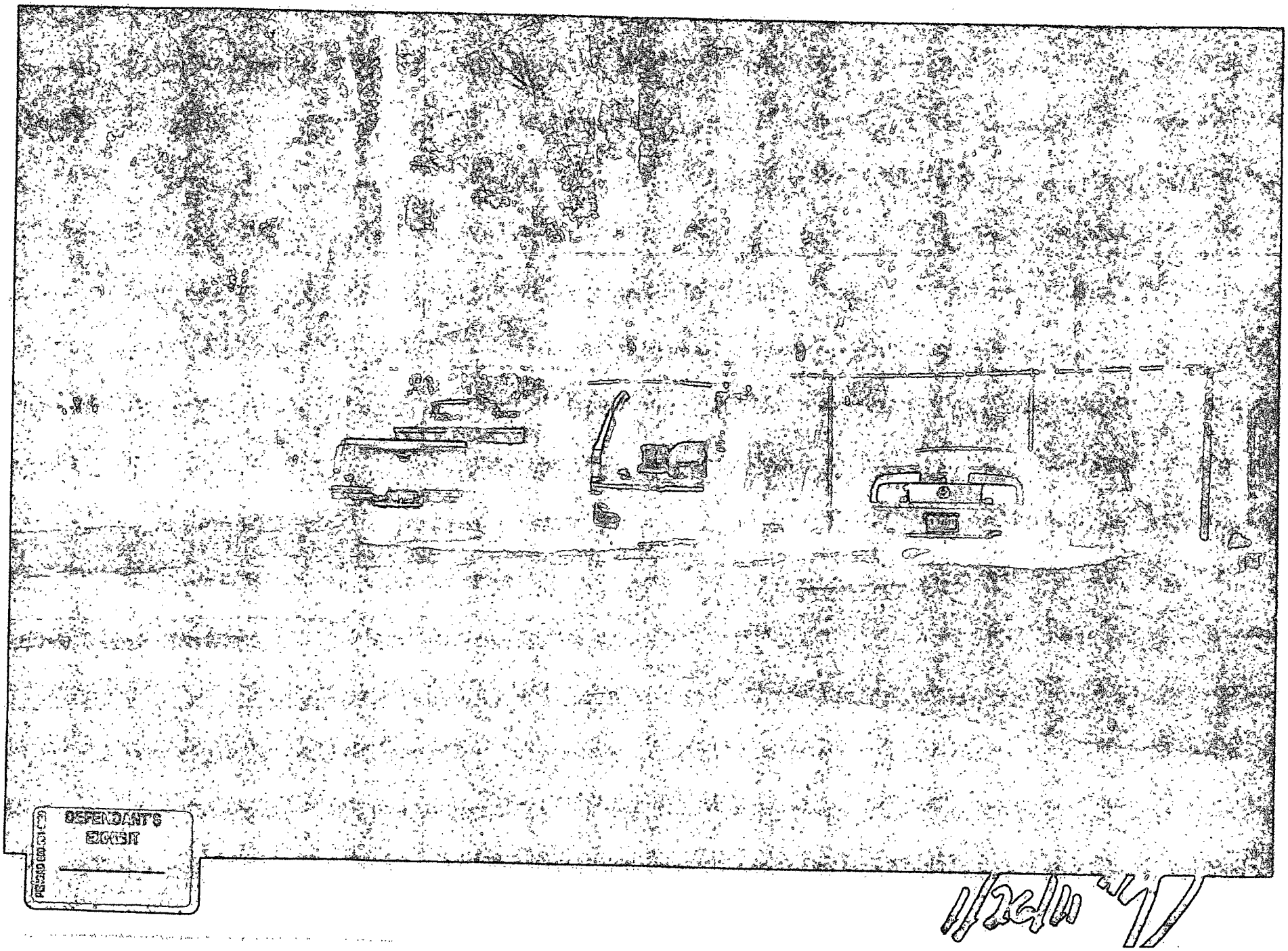
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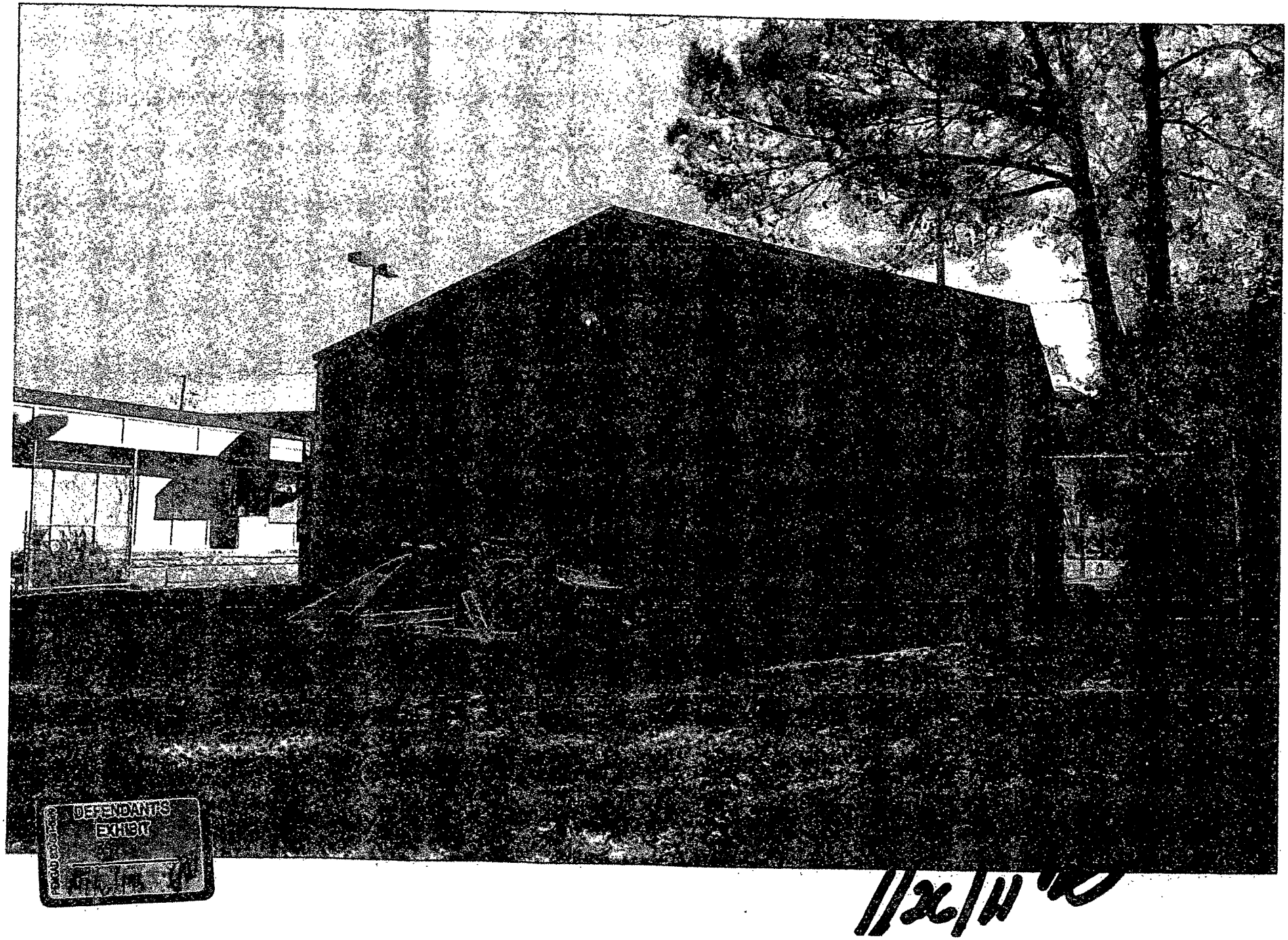

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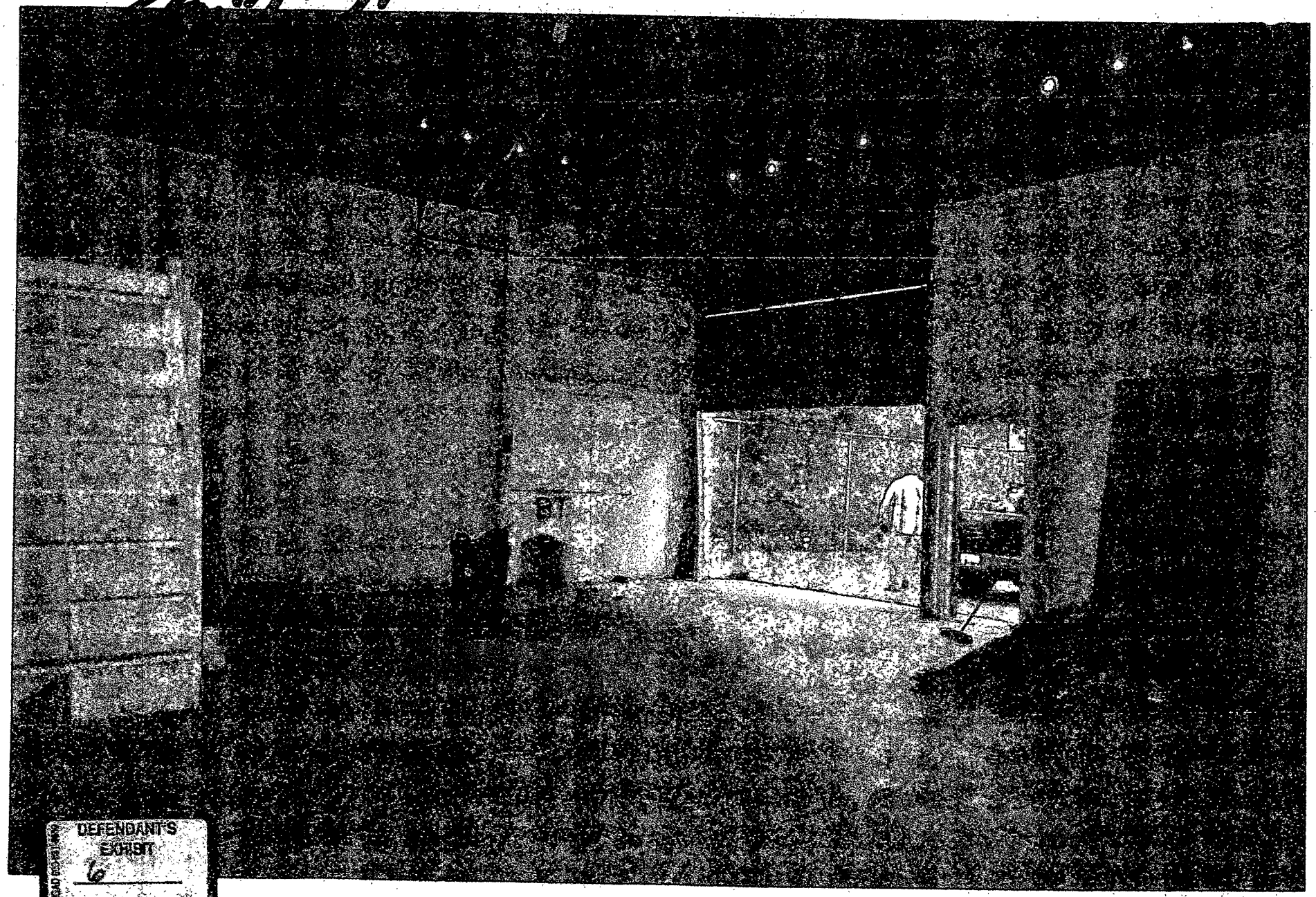

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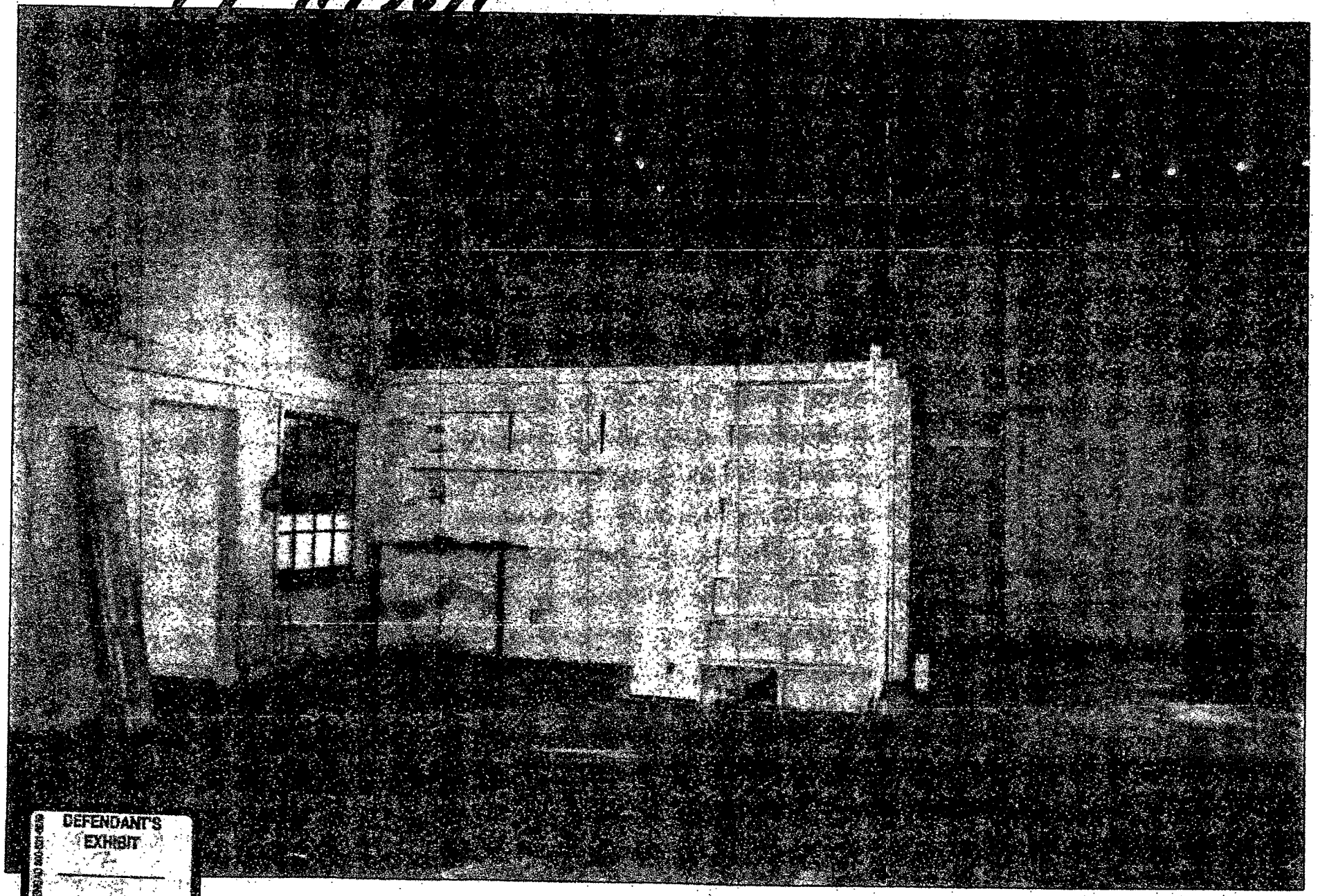

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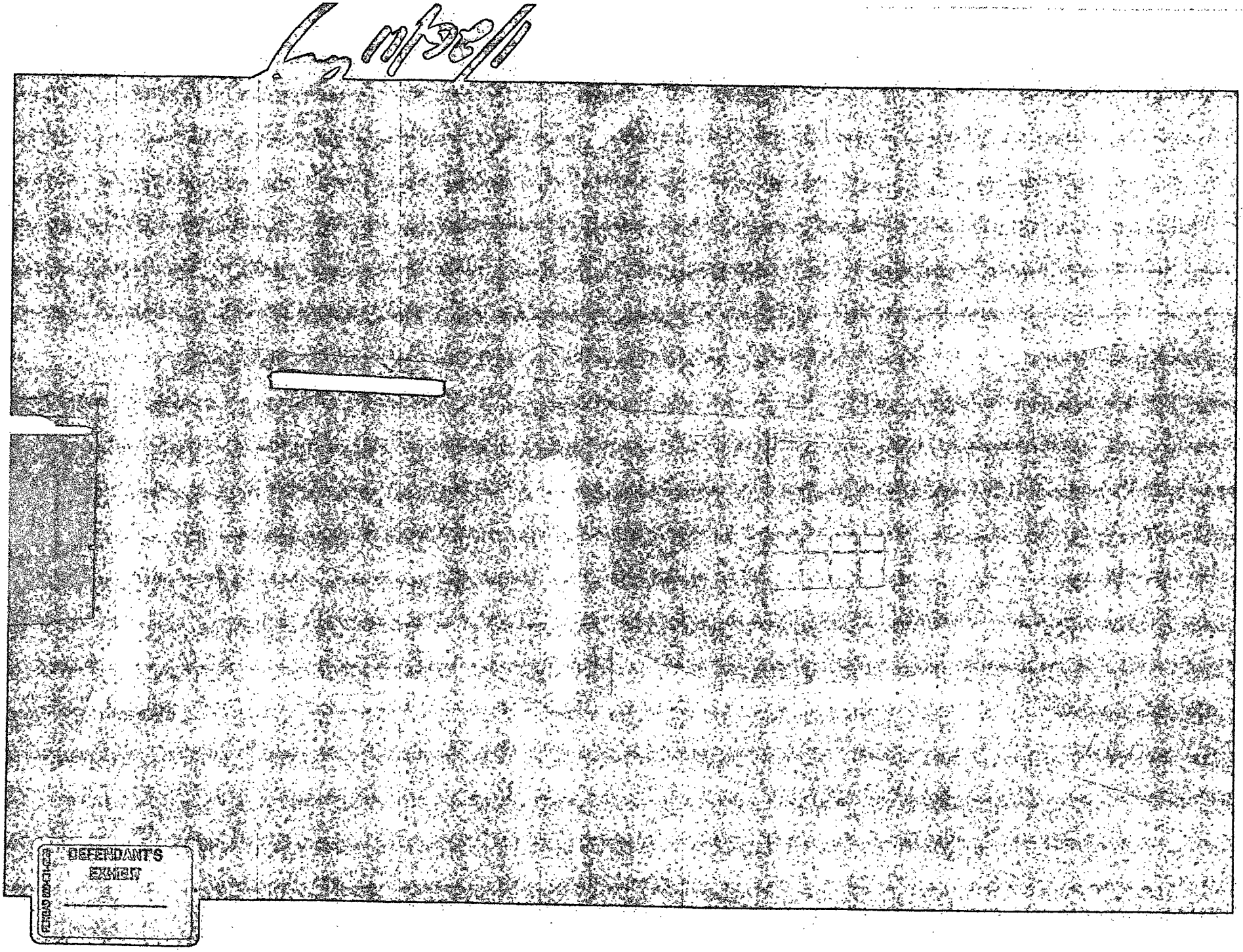
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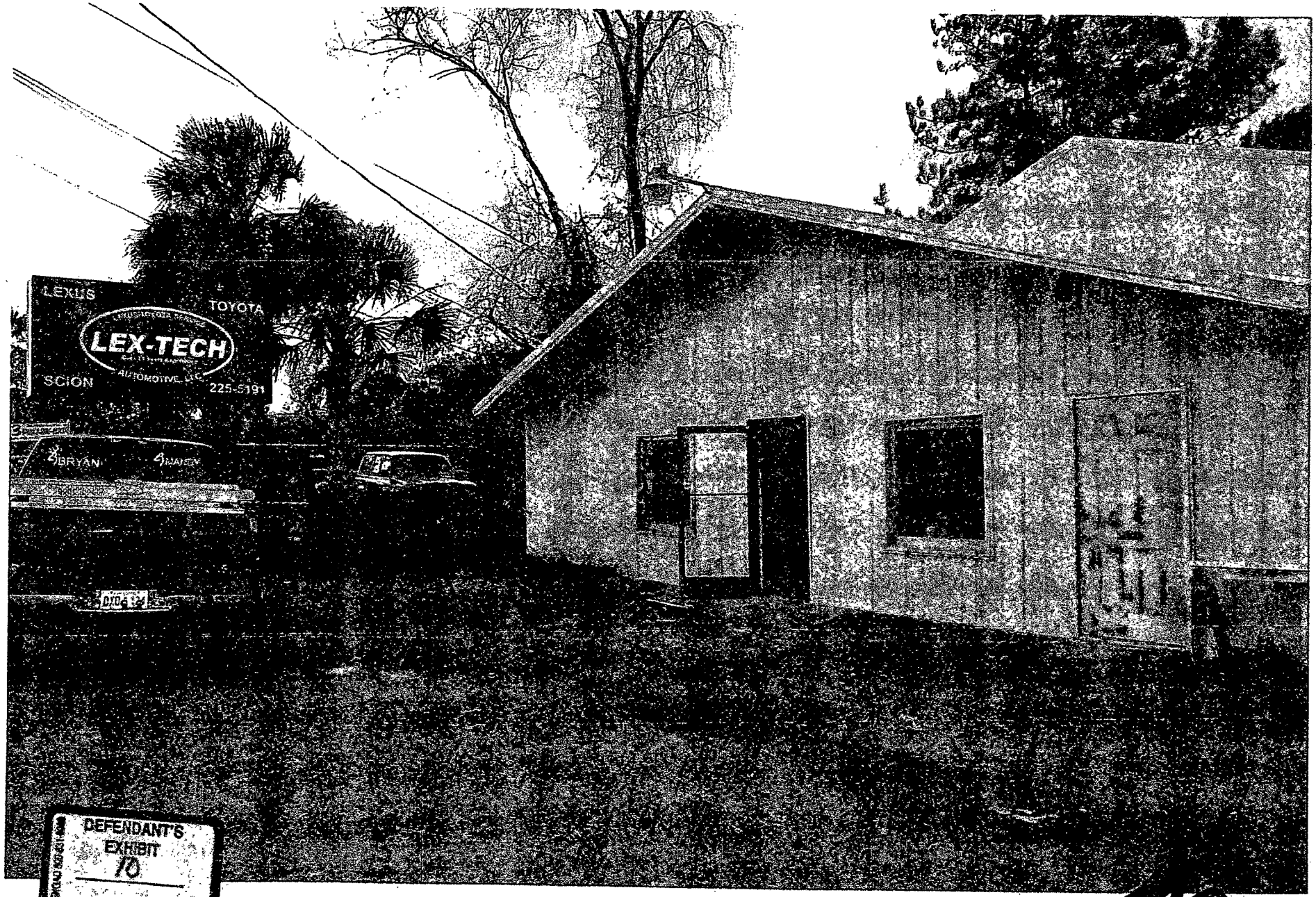

DEFENDANT'S EXHIBIT 10

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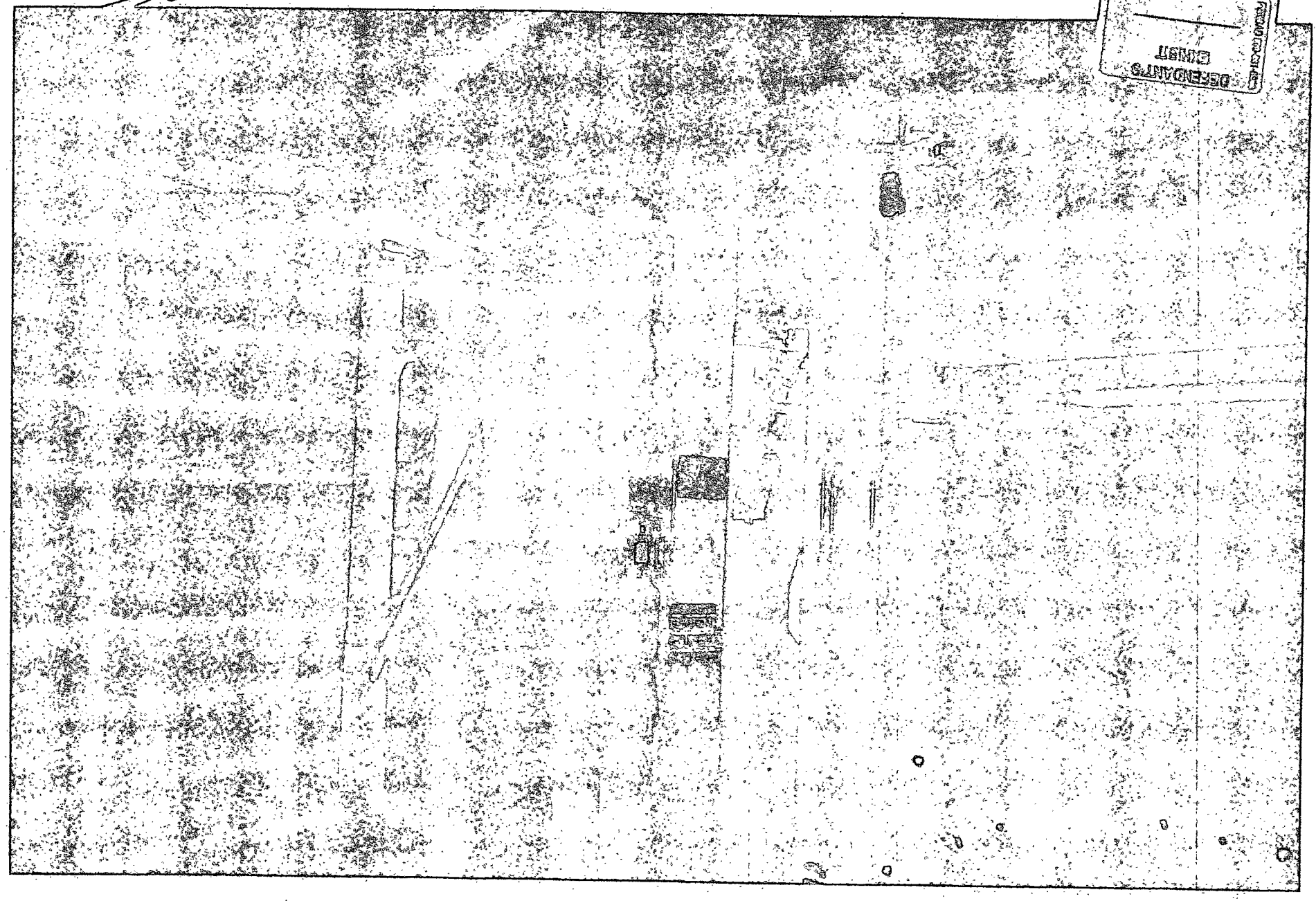

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McAdory0036
DEFENDANTS' EXHIBIT

DEFENDANT'S EXHIBIT

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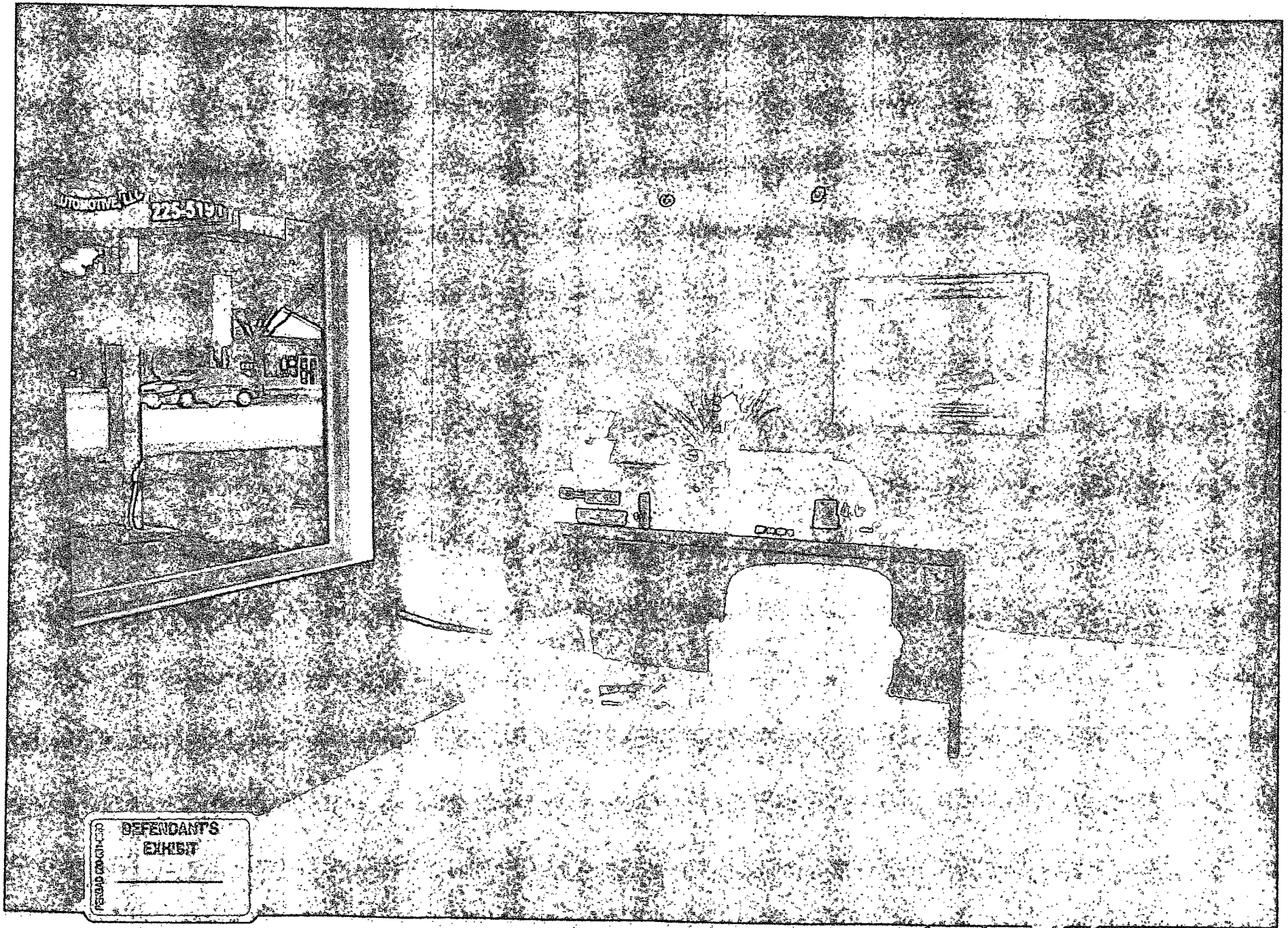
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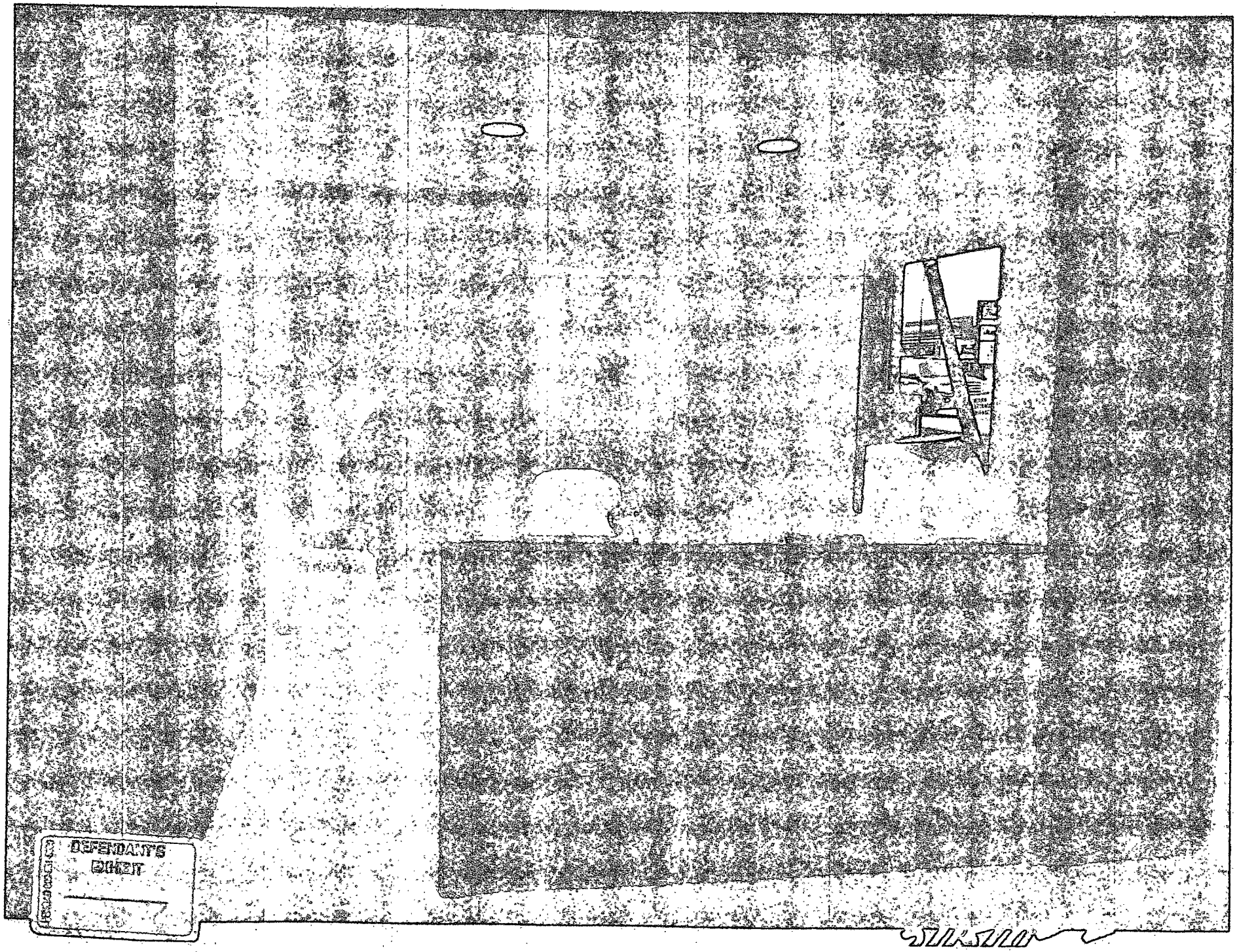
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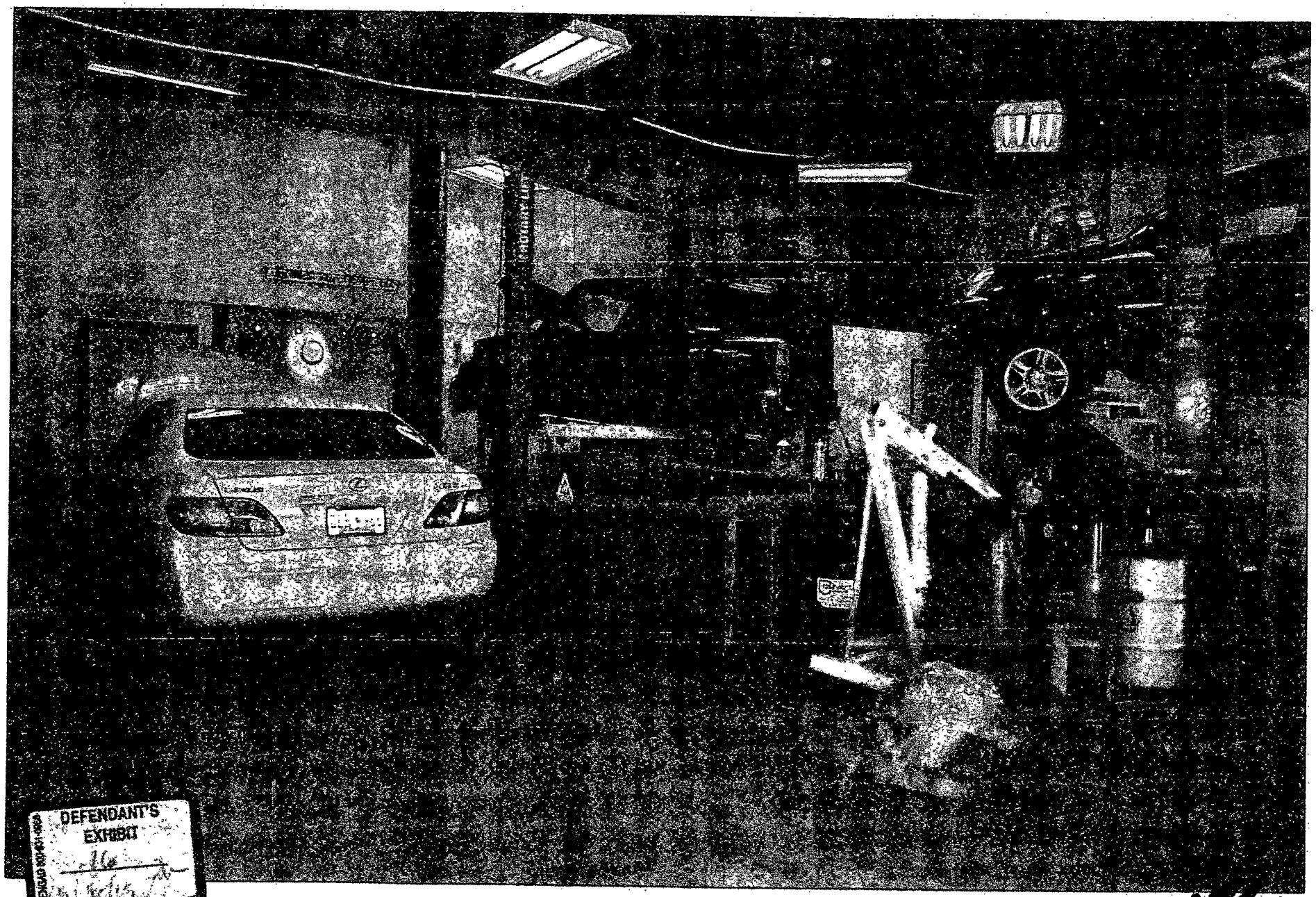

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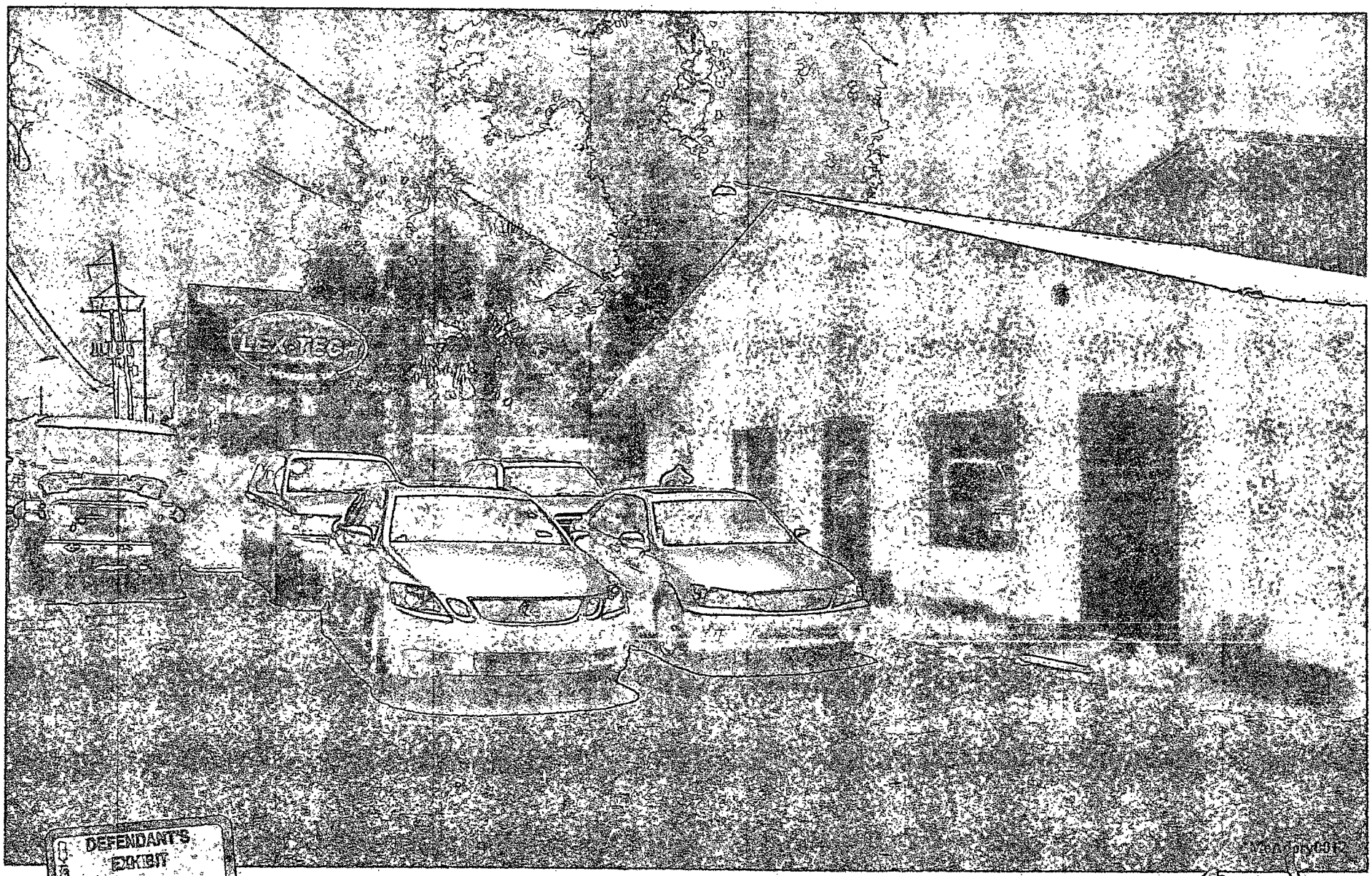


DEFENDANT'S EXHIBIT

Costs to Cure Estimate

[redacted]	Budget	Crest Industries, INC 4230 River Road Johns Island, Sc 29455 Paul Koenig	20x40	Updated Budget	[redacted]012 [redacted]as
Scope	[redacted]			3	Months
0			1,200.00	843-347-8875	

Phase	Comments		Costs	$/sq ft				
Design			$ -					
Engineering								
Permits			[redacted]	$ 0.42				
Temp Services	toilet,dumpster,etc		$ -					
	dumpster		$ 1,000.00	$ 0.83	[redacted] months	[redacted] per month		
Site engineering and survey			$ -		2	500		
			$ -					
Site Work			[redacted]		$ 5,500.00			
	Grading/fill				622.222222	yards	7	4355.55556
	Paving			2.08	277.777778	yards	$ 8.00	2222.22222
	Storm sewer			2.50	0	ft	22.65	0
	Utilities				0	yards	34.4	0
	final grade and top soil				8	hours	200	1600
	Building Pad				0 50	80	4000	
	Landscaping							
	Sewer service							
	Water Service							
	Utilities	Gas						
Foundation	Slab	Concrete	$ 4,400.00	3.67	800	miller	5.5	
			$ -					
Building Materials	Steel Building		$ 18,445.00	15.37				
			$ -					
Anchor Bolts			$ 100.00	0.08	3/4"	72	6	432
					1/2"	48	0	0
Doors	0 Overhead		$ -					
	6 window		$ 3,000.00	2.50	1300	Large		
	0 Walk doors	3-0x7-0	$ -		500	Large		
	store front impact		$ -		$ 1,000.00	In steel building price		
	1 store front doors	3' x 8'	$ 1,200.00		$ 42.00	5	140	700
	0 store front doors	6'x8'	$ -					
	4 Interior doors	3'x7,	$ 1,600.00		400			
Hardware								
	1 Door hardware		$ 400.00	0.33		door handle		
	1 Bath hardware		$ 300.00	0.25	$ 400.00	closser		
	0 Dock Levelers		$ -		300	TP, Grab bars,soap, mirror		
					3000			

DEFENDANT'S EXHIBIT

RECORD 0456

	5 Int door hardware		$	1,000.00			200			
Building Labor	erector		$	4,400.00	$ 3.67		5.5	800		
Insulation	Materials and labor		$	1,003.11	$ 0.84		0 sq ft of insulation			
Other building construction										
	Second floor framing	0	$	15,000.00	$ 12.50					
	Stairs	3	$	-			10	40	1200 sq ft	3.75
		1	$	-			10	80	800 sq ft	3.5
Plumbing	water heaters		$	200.00	$ 0.17		2	1300		
	Fixtures		$	500.00	$ 0.42		2	200		
	Labor others	3	$	2,000.00	$ 1.67		625			
Finishes	Flooring	1,200.00	$	2,400.00	$ 2.00	2		1200		
	Vinyl Base	260	$	455.00		1.75				
	ACT ceiling	1,200.00	$	3,600.00		3		1200		
	Interior Painting	234.00	$	2,106.00		0.65 walls		360	9	
	painting doors		$	350.00		70 doors		5		
Electrical	building elect		$	5,000.00	$ 4.17	0	20 touches			
						0	30			
Hvac			$	9,000.00	$ 7.50	sq ft	sq ft/ton	$/ton		
							1200	400	3000	
Fire suppression			$	-		0				
Contingency		0%	$	-						
	Sub Total		$	83,459.11	$ 69.55					
15.50%	Crest Management Fee		$	12,936.16	$ 10.78					
	Total Project		$	96,395.28	$ 80.33					
	Bid Price		$	-		sq ft	const $/sf	%		
Arch.	Design		$	-			0	0	0	
	Civil Engineering		$	-						
	Misc. Engineering		$	-						
GRAND TOTAL			$	96,395.28		$ 80.33				

RECORD 0457

Landscape Pavers, LLC
Post Office Box 31832
Charleston, South Carolina 29417
PHONE (843) 766-2363
FAX (843) 766-2226

INVOICE

SOLD TO:

Lex-Tech Automotive, LLC
873 Folly Road
Charleston, SC 29412

INVOICE DATE:	3-Jan-13
NUMBER:	10184
LPL JOB NO:	12-1806
LPL COST CODE:	2500
TERMS:	In full upon receipt
PO NUMBER:	

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	Remove existing gravel and install new crushed asphalt in parking area as agreed.		$ 13,658.00
		Tax	
		Freight	
			$ 13,658.00

PAID IN FULL
ABS

For questions concerning this invoice
Call: Joyce Schirmer
(843) 766-2363

MAKE ALL CHECKS PAYABLE TO:
Landscape Pavers, L.L.C.

Interest will accrue beginning on the date of this invoice on any unpaid balance pursuant to the terms of S. C. Code Ann. § 29-6-50.
Further, please be advised that pursuant to S. C. Code Ann. § 29-6-230, pay when paid clauses are unenforceable in South Carolina

THANK YOU FOR YOUR BUSINESS!

DEFENDANT'S EXHIBIT 19

Messages Help Security Logoff

ACCOUNTS TRANSFERS BILL PAYMENT STATEMENTS ALERTS CUSTOMER SERVICE

Accounts Overview | Account History | My Account Profile | My TurboTax

Account History

Printable Version

Account: Checking 6102 / $580.31

Checking 6102 (Checking...26102)

Available Balance	$580.31
Posted Balance	$580.31
Interest Paid (YTD)	$0.56
Interest Rate	0.010%

Change Overdraft Protection

BB&T Home Mortgage
Low rates. Flexible terms.
Apply Online »

Prime + 0% for life of line
(Now 3.25% variable APR)
Home Equity Lines »

Quick Links
- Overdraft Options New
- Checks and Deposit Slips
- Stop Payment on Checks
- Open New Account
- Buy Quicken
- Direct Deposit Form
- Add Plus Package
- Add Identity Protection
- Debit Card Dispute New

Posted Transactions | Pending Transactions | Bill Payment Checks

Search by: Date Range From: 01/10/2013 (mm/dd/yyyy) To: 01/11/2013 (mm/dd/yyyy) Back to Basic Search

Type: All Types Description: Search

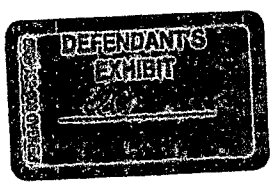
Date	Type	Check Number	Description	Debit	Credit	Daily Posted Balance
01/11/2013	Check	10810	CHECK #10810	$13,658.00		$14,188.18
01/11/2013	Check	10809	CHECK #10809	$56.00		
01/11/2013	Debit		PAYMENT TO RETAIL LOAN 90250936639001 01-11-13 BB&T ONLINE CREDIT LINE PMT	$2,500.00		
01/11/2013	Debit		PAYMENT TO CREDIT CARD 461608110309729 9 01-11-13 BB&T ONLINE CREDIT CARD PMT	$806.36		
01/11/2013	Deposit		DEPOSIT		$770.66	

Note: Transactions are paid from your Available Balance at the time of posting consistent with payment guidelines in your Bank Service Agreement.

Available Balance: The amount of money you have to draw upon. Your Available Balance does not include funds that are being held.

Posted Balance: The amount of money posted in your account after final nightly processing is completed.

Daily Posted Balance: The posted balance after nightly processing is completed. Please note that transactions are paid from your Available Balance consistent with our payment guidelines, and that the Available Balance may be different than your Daily Posted Balance. Important: **The Daily Posted Balance does not reflect all pending transactions and fees and should not be used to determine how overdraft fees were assessed.**



Online Banking/Account Support 1-888-BBT-ONLINE (1-888-228-6654) Credit Cards 1-800-476-4228

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LEX TECH AUTOMOTIVE LLC
General Ledger

Date	Reference	T	Description	Beginning Balance	Current Amount	Period End Amount	YTD Balance
	1228 LEASEHOLD IMPROVEMENTS			20,000.00			
02/28/11	10				5,348.00		
02/28/11	50				2,000.92		
02/28/11	3820		LEASEHOLD IMPROVEMENTS		346.15		
02/28/11	3821		LEASEHOLD IMPROVEMENTS		113.75		
02/28/11	3822		LEASEHOLD IMPROVEMENTS		3,405.30		
02/28/11	3827	V	LEASEHOLD IMPROVEMENTS		2,750.00		
02/28/11	3841		LEASEHOLD IMPROVEMENTS		150.00		
02/28/11	3845		LEASEHOLD IMPROVEMENTS		125.00		
02/28/11	3850		LEASEHOLD IMPROVEMENTS		1,900.00		
02/28/11	3851		LEASEHOLD IMPROVEMENTS		1,454.00		
02/28/11	3864		LEASEHOLD IMPROVEMENTS		4,110.00		
02/28/11	3867		LEASEHOLD IMPROVEMENTS		900.00		
02/28/11	3875		LEASEHOLD IMPROVEMENTS		572.09		
02/28/11	3876		LEASEHOLD IMPROVEMENTS		925.00		
				February	24,100.21	44,100.21	
03/31/11	3910		LEASEHOLD IMPROVEMENTS		1,658.00		
03/31/11	3927		LEASEHOLD IMPROVEMENTS		5,180.00		
				March	6,838.00	50,938.21	
04/30/11	50				199.49		
				April	199.49	51,137.70	
05/31/11	4027		LEASEHOLD IMPROVEMENTS		900.00		
05/31/11	4063		LEASEHOLD IMPROVEMENTS		2,700.00		
				May	3,600.00	54,737.70	
06/30/11	4094		FENCE		905.00		
				June	905.00	55,642.70	
08/31/11	4221		LEASEHOLD IMPROVEMENTS (parking lot drain install & grading)		2,100.00		
				August	2,100.00	57,742.70	
10/31/11	4393		LEASEHOLD IMPROVEMENTS (land/property surveying)		1,166.00		
10/31/11	4412		LEASEHOLD IMPROVEMENTS (plumbing repairs)		832.00		
				October	1,998.00	59,740.70	
11/30/11	4434		LEASEHOLD IMPROVEMENTS(Heating & Air installation)		6,200.00		
11/30/11	4458		LEASEHOLD IMPROVEMENTS (Heating & AC)		300.00		
				November	6,500.00	66,240.70	
12/31/11	4507		LEASEHOLD IMPROVEMENTS (repave front lot)		550.00		
12/31/11	4522		LEASEHOLD IMPROVEMENTS (electrical work)		965.00		
				December	1,515.00	67,755.70	
05/04/12	10		LEASEHOLD IMPROVEMENTS		1,088.65		
05/04/12	4781		LEASEHOLD IMPROVEMENTS		1,746.35		
05/04/12	4819		LEASEHOLD IMPROVEMENTS (land Survey)		68.00		
05/04/12	4824		LEASEHOLD IMPROVEMENTS (Garage Door		54.00		

DEFENDANTS EXHIBIT

LEX TECH AUTOMOTIVE LLC
General Ledger

Date	Reference T	Description	Beginning Balance	Current Amount	Period End Amount	YTD Balance
	1228 LEASEHOLD IMPROVEMENTS (cont.)					
			May	2,957.00	70,712.70	
06/30/12	4862	LEASEHOLD IMPROVEMENTS (wiring garage doors)		1,045.78		
			June	1,045.78	71,758.48	
07/31/12	4916	LEASEHOLD IMPROVEMENTS		179.00		
			July	179.00	71,937.48	
08/31/12	4995	LEASEHOLD IMPROVEMENTS (NEW OFFICE A/C SYSTEM)		3,475.00		
			August	3,475.00	75,412.48	
				55,412.48		75,412.48

Range of Accounts Specified:

Total Profit/(Loss) 0.00

Number of Transactions 34

The General Ledger is in balance 0.00

RECEIVED
OCT 29 2014
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Abigail B. Walsh, Esquire
S.C. Bar # 71291
Williams & Walsh, LLC
125-A Wappoo Creek Drive
Suite 202
Charleston, SC 29412
(843) 722-0157
Attorney for Appellant